

# Large Filing Separator Sheet

Case Number: 07-551-EL-AIR  
07-552-EL-ATA  
07-553-EL-AAM  
07-554-EL-UNC

File Date: 2/26/08

Section: 1 of 2

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FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the :  
Application of Ohio Edison:  
Company, The Cleveland :  
Electric Illuminating :  
Company, and The Toledo :  
Edison Company for : Case Nos. 07-551-EL-AIR  
Authority to Increase : 07-552-EL-ATA  
Rates for Distribution : 07-553-EL-AAM  
Service, Modify Certain : 07-554-EL-UNC  
Accounting Practices, and :  
For Tariff Approvals. :

PROCEEDINGS

before Ms. Kimberly W. Bojko and Mr. Gregory Price,  
Hearing Examiners, at the Public Utilities Commission  
of Ohio, 180 East Broad Street, Room 11-C, Columbus,  
Ohio, called at 10:00 a.m. on Tuesday, February 12,  
2008.

VOLUME V

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22 Fair Utility Rates, and the Empowerment  
23 Center of Greater Cleveland.

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1 Tuesday Morning Session,

2 February 12, 2008.

3 - - -

4 EXAMINER BOJKO: Let's go on the record.  
5 This is a continuation of Case No. 07-551-EL-AIR, et  
6 al., in the Matter of the Application of Ohio Edison  
7 Company, Cleveland Electric Illuminating Company, and  
8 The Toledo Edison Company for Authority to Increase  
9 Rates for Distribution Service, Modify Certain  
10 Accounting Practices, and for Tariff Approvals.

11 My name is Kimberly Bojko, and with me  
12 today is Gregory Price. We're the Attorney Examiners  
13 assigned to the case. We'll take abbreviated  
14 appearances at this time.

15 Start with the company.

16 MR. FELD: Good morning, your Honor. My  
17 name is Stephen Feld, counsel for FirstEnergy. With  
18 me today is Mr. Arthur Korkosz, Mark Hayden, and  
19 Ebony Miller, along with Mark Whitt from the law firm  
20 of Jones Day. Thank you.

21 EXAMINER BOJKO: Staff.

22 MR. WRIGHT: Good morning, your Honor.  
23 On behalf of the staff of the Public Utilities  
24 Commission, I'm Bill Wright. Also with me is Tom

1     McNamee and John Jones.

2                   EXAMINER BOJKO:   Mr. Rinebolt.

3                   MR. RINEBOLT:   On behalf of Ohio Partners  
4     for Affordable Energy, David C. Rinebolt and Colleen  
5     L. Mooney.

6                   EXAMINER BOJKO:   Mr. Breitschwerdt.

7                   MR. BREITSCHWERDT:   Good morning, your  
8     Honor.   On behalf of Ohio Schools Council, Brett  
9     Breitschwerdt, Glen S. Krassen, Bricker & Eckler,  
10    LLP.

11                   MR. NEILSEN:   Good morning, your Honor.  
12    On behalf of Industrial Energy Users-Ohio for McNees,  
13    Wallace & Nurick, Daniel J. Neilsen, Lisa G.  
14    McAlister, and Samuel C. Randazzo.

15                   MR. SMALL:   On behalf of the Office of  
16    the Ohio Consumers' Counsel, Jeffrey L. Small and  
17    Richard Reese.

18                   EXAMINER BOJKO:   And we'll have the  
19    record reflect that Mr. Yurick of Chester Willcox is  
20    here on behalf of the City of Cleveland.   He stepped  
21    out of the room momentarily.

22                   We have some housekeeping items before we  
23    begin with our next witness.

24                   FirstEnergy.   Yes, your Honor.   With the

1 testimony of Miss Lettrich yesterday that concluded  
2 the presentation of witnesses in support of the  
3 companies' case in chief and that being so, I would  
4 ask to have certain items overall identified for the  
5 record. In particular, I would ask that the original  
6 application in this case, the accompanying standard  
7 filing requirements schedules, and workpapers  
8 pertaining thereto be identified as Company Exhibit  
9 No. -- I believe 21 is my next number.

10 EXAMINER BOJKO: Yes. It will be so  
11 marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. KORKOSZ: And the subsequent updated  
14 filing of the standard filing requirements schedules  
15 and the accompanying workpapers that was filed on  
16 July 31st, 2007, I ask to have identified for the  
17 record as Company Exhibit No. 22.

18 EXAMINER BOJKO: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. KORKOSZ: And I had earlier at the  
21 commencement of the hearings asked that the copies of  
22 the newspaper notice of this proceeding and the  
23 proofs of publication be identified as Company  
24 Exhibit No. 18. They were available with the court

1 reporter for the examination since that time by any  
2 of the parties who cared to look at them. With the  
3 identification of all those on the record I would ask  
4 that Company Exhibits 18, 21, and 22 be admitted into  
5 the record.

6 EXAMINER BOJKO: Is there any opposition  
7 to the admission of Company Exhibits 18, 21, and 22?

8 Hearing none, those will be admitted.

9 MR. KORKOSZ: Thank you.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER BOJKO: Next, Mr. Feld.

12 MR. FELD: The company would request that  
13 a stipulation and recommendation which was filed  
14 yesterday with the Commission be marked as Signatory  
15 Parties Exhibit No. 1. It is a stipulation and  
16 recommendation among the companies, OCC, IEU, OEG,  
17 Kroger, and OPAC.

18 EXAMINER BOJKO: And that was filed on  
19 February 11th?

20 MR. FELD: February 11th, yes, your  
21 Honor.

22 EXAMINER BOJKO: And then Schedule A was  
23 filed separately this morning?

24 MR. FELD: It was filed separately this

1 morning in the same.

2 EXAMINER BOJKO: February 12th. Would  
3 you like to have these marked together?

4 MR. FELD: Yes, if we could have both the  
5 stipulation and the Schedule A marked as Signatory  
6 Parties Exhibit No. 1.

7 EXAMINER BOJKO: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. FELD: The company will be having a  
10 witness in its rebuttal case supporting the  
11 stipulation and recommendation.

12 EXAMINER BOJKO: Thank you.

13 We will defer movement and admission of  
14 the exhibit at that time.

15 IEU?

16 MR. NEILSEN: Your Honor, as a result of  
17 the signing and filing of the stipulation by  
18 IEU-Ohio, IEU-Ohio will be withdrawing the testimony  
19 of Kevin M. Murray and objections to the Staff Report  
20 Nos. 2 through 6, 8, 9, 11 through 14, 17 through 19,  
21 21, 22, 24 through 27, 30 through 34, 36, 37, and 39  
22 through 42. Also as noted in the stipulation IEU's  
23 withdrawal of objections 2, 4, 30, and 32 are  
24 contingent upon Commission approval of Company

1 Revised Schedule B-6 as it pertains to those  
2 objections and as reflected in the Second  
3 Supplemental Testimony of Company Witness Young.

4 EXAMINER BOJKO: So noted. Does IEU have  
5 one more matter before us?

6 MR. NEILSEN: Yes, your Honor. As a  
7 result of the stipulation being filed and the  
8 withdrawal of Kevin Murray's testimony and the  
9 associated objections, IEU-Ohio would like to update  
10 and revise the testimony of Joseph Bowser. That  
11 testimony was filed this morning, the supplemental  
12 testimony was filed this morning at the Commission  
13 and followed with an update to that inasmuch as one  
14 of the exhibits to that testimony was incorrect.

15 Therefore, IEU-Ohio moves to, one, mark  
16 the Supplemental Testimony of Joseph Bowser filed  
17 this morning as IEU-Ohio Exhibit 14 and the corrected  
18 exhibit to Mr. Bowser's Supplemental Testimony as  
19 IEU-Ohio Exhibit 15.

20 EXAMINER BOJKO: They will be so marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MR. NEILSEN: Permission to approach the  
23 Bench.

24 EXAMINER BOJKO: You may.

1 MR. NEILSEN: And, your Honor, with that  
2 IEU moves to admit both IEU Exhibits 14 and 15 into  
3 the record.

4 EXAMINER BOJKO: Is there any opposition  
5 to the admission of IEU 14 and IEU 15, Supplemental  
6 Testimony of Mr. Bowser?

7 Hearing none, they will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 MR. NEILSEN: Thank you, your Honor.

10 EXAMINER BOJKO: Let's go off the record  
11 just briefly.

12 (Discussion off the record.)

13 EXAMINER BOJKO: Let's go back on the  
14 record.

15 Staff?

16 MR. WRIGHT: Yes, your Honor. Two  
17 matters, the first of which I'm pleased to announce  
18 that the staff has filed its last piece of testimony,  
19 that of Mr. Cahaan, this morning. I believe the  
20 Bench and the reporter have already been provided  
21 with copies of that.

22 And as requested, we can report this  
23 morning that we will have no cross-examination for  
24 City of Cleveland Witness Goins.



1 EXAMINER BOJKO: I believe it's Nucor's  
2 witness.

3 MR. WRIGHT: Nucor's Witness Goins,  
4 excuse me. Thank you.

5 EXAMINER BOJKO: Our last housekeeping  
6 item, yesterday OCC marked OCC Exhibit 20, it was the  
7 UMS consultant report. We heard arguments on the  
8 admission of the report or portions thereof  
9 yesterday. We are going to grant the admission of  
10 the report. We will note that the staff report  
11 refers in great detail to the UMS report, page 76  
12 through 79, in that staff asked the Commission to  
13 implement the findings contained in the consultant  
14 report without any further rationale in the Staff  
15 Report, so we believe it is necessary for the staff  
16 findings.

17 Additionally, the company witness also  
18 quoted the report which was used in cross-examination  
19 as well as in other people's testimony, so we are  
20 going to admit OCC Exhibit 20.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER BOJKO: I believe OCC's witness  
23 is the next on our list.

24 MR. REESE: Yes, your Honor. Your Honor,

1 the OCC calls Aster Adams to the stand and would like  
2 his direct prepared testimony marked as OCC Exhibit 2  
3 and his correction sheet marked as OCC Exhibit 2A.  
4 Your Honors, I've provided you with copies of the  
5 exhibits.

6 EXAMINER BOJKO: They will be so marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 EXAMINER BOJKO: Mr. Adams, would you  
9 raise your right hand, please?

10 (Witness sworn.)

11 EXAMINER BOJKO: You may be seated.

12 - - -

13 ASTER R. ADAMS

14 being first duly sworn, as prescribed by law, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Reese:

18 Q. Mr. Adams, can you please state your full  
19 name and business address for the record.

20 A. My name is Aster Adams. I am employed as  
21 a Director of Analytical Services Department at the  
22 Office of the Ohio Consumers' Counsel, 10 West Broad,  
23 Suite 1800, Columbus, Ohio.

24 Q. Are you the same Aster Adams whose

1 prepared testimony was filed on January 10th, 2008,  
2 in this case?

3 A. Yes.

4 Q. On whose behalf do you appear?

5 A. I prepared this testimony on behalf of  
6 the Office of the Ohio Consumers' Counsel.

7 Q. Do you have your prepared testimony with  
8 you on the stand?

9 A. Yes.

10 Q. Did you prepare the testimony, or was it  
11 prepared at your direction?

12 A. I did.

13 Q. Do you have any changes or corrections to  
14 your prepared testimony?

15 A. Yes, I have a few minor changes to the  
16 testimony. On page 9 at line 16 where it says, "The  
17 Staff used a group of 23 electric utilities," I meant  
18 to say "23 electric and gas utilities."

19 On page 22, lines 15 and 16, I would like  
20 to delete the sentence that starts "When one uses the  
21 adjusted Betas" in the middle of line 15.

22 On page 23, line 7 and in the footnote 6,  
23 where I discuss about the Beta, the divider line Beta  
24 adjustment, I need to change 0.33 to 0.35.

1           And finally on page 32, line 13 through  
2           15, the values that are presented in the testimony  
3           are not correct. I needed to replace "10.36 percent"  
4           on line 13 by 10.46 percent. On line 14, replace  
5           "10.93 percent" by 11.07 percent. And on line 15,  
6           replace "9.79 percent" by 9.84 percent.

7           Those are the changes.

8           Q.    Mr. Adams, if I asked you today the same  
9           questions found in your prepared testimony as  
10          modified by your changes just stated on the stand,  
11          would your answers be the same?

12          A.    Yes.

13          MR. REESE: The OCC moves for admission  
14          of OCC Exhibits 2 and 2A and tenders the witness for  
15          cross-examination.

16          EXAMINER BOJKO: I will defer ruling on  
17          the admission pending cross-examination.

18          IEU, do you have any cross-examination?

19          MR. KORKOSZ: Your Honor, excuse me.

20          Prior to the commencement of cross-examination I have  
21          a motion to strike.

22          EXAMINER BOJKO: Please go forward at  
23          this time.

24          MR. KORKOSZ: I would move to strike the

1 Attachment ARA-9 as well as the portion of testimony  
2 which refers to it which is on page 49, lines 7  
3 through 9.

4 EXAMINER BOJKO: Page 49, 7 through 9?

5 MR. KORKOSZ: Page 49, and it's the  
6 sentence that begins on line 7 beginning with the  
7 words "This methodology," and concluding with the  
8 reference to "Attachment ARA-9" on line 9.

9 MR. REESE: Could I have those read back  
10 to me, please?

11 MR. KORKOSZ: I can repeat it. The  
12 Attachment ARA-9 in its entirety, as well as in  
13 Mr. Adams' content of his testimony, page 49, line 7  
14 beginning the words "This methodology," the entirety  
15 of that sentence which ends with the reference on  
16 line 9 to the "Attachment ARA-9."

17 EXAMINER BOJKO: Basis?

18 MR. KORKOSZ: The basis is hearsay, your  
19 Honor. This is excerpts from the testimony of  
20 another person which is filed in a different  
21 proceeding. It's apparent from the context of  
22 Mr. Adams' testimony that it is being offered for the  
23 truth of the content stated therein, in particular  
24 Mr. Adams states that this particular approach that

1 is, I quote -- or is explained in, quote, the  
2 "relevant pages of Dr. Woolridge's testimony," which  
3 he attaches. I have no opportunity to cross-examine  
4 that person or the statements that are being  
5 asserted. It fits the classic definition of hearsay,  
6 and I ask that it be stricken.

7 EXAMINER BOJKO: Just to be clear, on  
8 page 49 you're only moving to strike the last  
9 sentence of that?

10 MR. KORKOSZ: The last sentence of answer  
11 58, yes, ma'am.

12 EXAMINER BOJKO: OCC have a response?

13 MR. REESE: Yes, your Honor. If I could  
14 have a minute, please.

15 Your Honor, based on Ohio Rules of  
16 Evidence Rule 703, bases of opinion testimony by  
17 experts, Mr. Adams can rely on documents and other  
18 data to support his testimony. The data itself need  
19 not be admissible in evidence in order for the  
20 opinion or inference to be admitted.

21 MR. KORKOSZ: I have a response to that,  
22 your Honor.

23 EXAMINER PRICE: Let's hear it.

24 MR. KORKOSZ: I have no objection to

1 Mr. Adams relying on this in any way, but it seems in  
2 context that it is being offered for the truth of the  
3 statements therein as comprising part of the record,  
4 and it is that to which I object.

5 EXAMINER BOJKO: I believe 703 is talking  
6 about Mr. Adams' opinion, not the opinion and data of  
7 another witness testifying in a different proceeding.  
8 The motion will be granted. Attachment ARA-9 will be  
9 stricken, and the last sentence in question 58, page  
10 49, beginning line 7 through 9 will be stricken as  
11 well.

12 Anything further?

13 MR. KORKOSZ: No further motions to  
14 strike.

15 EXAMINER BOJKO: IEU, do you have any  
16 cross-examination for this witness?

17 MR. NEILSEN: No questions, your Honor.

18 EXAMINER BOJKO: Schools have any cross?

19 MR. BREITSCHWERDT: No questions, your  
20 Honor.

21 EXAMINER BOJKO: Company?

22 MR. KORKOSZ: Thank you, your Honor.

23 - - -

24

## CROSS-EXAMINATION

By Mr. Korkosz:

Q. Good morning, Mr. Adams.

A. Good morning.

Q. You were here in the hearing room earlier when Mr. Wright indicated that Mr. Cahaan's testimony had been filed and has been distributed this morning?

A. Yes, I was.

Q. I assume that you have not had a chance to read or review that testimony.

A. You are correct.

Q. Okay. So we won't go there.

A. Thank you.

Q. You joined the Ohio Consumers' Counsel in 2005, correct?

A. That's correct.

Q. And before that time you were with the Tennessee Regulatory Authority?

A. Yes.

Q. Years 1999 through 2005.

A. That's correct.

Q. And for shorthand you refer to that as the TRA, correct?

A. That's correct.



1 Q. All right. Your work experience prior to  
2 the TRA is listed on page 2 of your testimony, right?  
3 It's in your testimony, right?

4 A. Okay. Yes.

5 Q. And the participation that you have in  
6 rate cases you tell us is indicated on your  
7 Attachment ARA-1, correct?

8 A. Correct.

9 Q. And the first seven of those items is  
10 your Tennessee experience, correct?

11 A. Subject to check, if you give me a  
12 second.

13 Q. Sure.

14 A. That's correct.

15 Q. And in those matters you acted as an  
16 adviser to the TRA; is that correct?

17 A. I acted as an adviser to the TRA  
18 directors.

19 Q. To the TRA directors.

20 A. That's correct.

21 Q. All right. And I infer from that that  
22 you did not testify as a witness in those  
23 proceedings, correct?

24 A. As an adviser to the commissioners or the

1 directors, we were not subject to testifying, but we  
2 are also given opportunity to help the lawyers during  
3 the cross-examination in those cases.

4 Q. You said help the lawyers.

5 A. Yes.

6 Q. You did not actually give sworn testimony  
7 yourself though; is that correct?

8 A. That's correct.

9 Q. And none of the matters that you list  
10 here involved an electric utility, did they?

11 A. That's correct. No.

12 Q. Now, in Tennessee most customers receive  
13 electric service from entities other than companies  
14 that are regulated by the TRA, correct?

15 A. Most customers, yes.

16 Q. And, in fact, the TRA only has  
17 jurisdiction over three electric utilities, right?  
18 I'll help you out, Kingsport Power, Entergy, Arkansas  
19 and Kentucky Utilities. Or do you recall?

20 A. Legally the TRA has jurisdiction over the  
21 three, but by arrangement between the three  
22 commissioners -- the three commissions --

23 Q. The state commissions.

24 A. -- the state commissions for Kentucky,

1     Arkansas, and Tennessee are, the customers of Entergy  
2     and the customers of Kentucky Utilities are overseen  
3     by the commissions in Arkansas and Kentucky.

4             So in practice TRA has jurisdiction over  
5     Kingsport Power only.

6             Q.     You're beeping out here.

7             Kingsport Power is the only electric  
8     company over which the TRA exercises rate of return  
9     jurisdiction, correct?

10            A.     That's correct.

11            Q.     And other commissions set the rates for  
12     the other two companies, right?

13            A.     That's correct.

14            Q.     And those other two companies only have  
15     about 50 or so customers between them in Tennessee.

16            A.     Yeah. I assume you are correct.

17            Q.     A very small number.

18            A.     Yeah, a very small number.

19            Q.     And Kingsport Power is an AEP subsidiary,  
20     right?

21            A.     That is correct.

22            Q.     And during your time with the TRA,  
23     Kingsport Power had no electric base rate cases,  
24     right?

1 A. You are correct.

2 Q. Okay. Now, part of the reason for the  
3 limited extent of TRA authority over electric  
4 utilities can be attributed to the fact that the  
5 Tennessee Valley Authority is the largest source of  
6 generation in the state, correct?

7 A. That's correct.

8 Q. And that's a federal entity over which  
9 the TRA has no jurisdiction as to rates and the like,  
10 correct?

11 A. That's correct.

12 Q. Okay. Now, the state of Tennessee  
13 studied the issue of state deregulation of electric  
14 generation around 1999-2000 but chose not to adopt  
15 any form of deregulation, correct?

16 A. Our recommendation -- the recommendation  
17 of the TRA was not to move forward with deregulation  
18 and instead the state legislature accepted our  
19 recommendation.

20 Q. Now, you filed testimony in Ohio since  
21 you've been with the OCC in cases other than this  
22 proceeding, correct?

23 A. That's correct.

24 Q. And two of those are listed on your

1 ARA-1, right?

2 A. That's correct.

3 Q. Okay. And since you filed your testimony  
4 in this case you've had an opportunity to file  
5 testimony in the Duke Energy proceeding, correct?

6 A. That's correct.

7 Q. So we have four pieces of testimony filed  
8 in Ohio, right?

9 A. Yes.

10 Q. And no others that I haven't mentioned,  
11 are there?

12 A. Those are the four.

13 Q. Those are the four.

14 And the Ohio water case was settled,  
15 never went to hearings, and you weren't  
16 cross-examined, right?

17 A. That's correct.

18 Q. Okay. And Ohio Aqua Water hasn't gone to  
19 hearings yet, right?

20 A. That's correct.

21 Q. Nor has Duke, right?

22 A. That's correct.

23 Q. So is this the first time --

24 EXAMINER BOJKO: I'm sorry, did you file

1 two in Duke, because Mr. Korkosz said four  
2 testimonies?

3 MR. KORKOSZ: I'm sorry, let's run  
4 through it.

5 Q. You filed testimony in this case, right?

6 A. Yes.

7 Q. And Duke.

8 A. And Duke.

9 Q. And Ohio Water and -- or Ohio Aqua Water,  
10 right?

11 A. Aqua Ohio.

12 Q. That's the four.

13 A. Yes.

14 EXAMINER BOJKO: Thank you.

15 Q. And this is the first time you've  
16 testified.

17 A. That's the first time, yes.

18 Q. In any regulatory proceeding. Subject to  
19 the explanation you gave me earlier that you assisted  
20 in the cross-exam or you assisted attorneys in  
21 Tennessee.

22 A. This is the first time I testified in a  
23 rate case setting, although I have appeared before  
24 the Tennessee directors in friendly discussions

1 representing the commission.

2 Q. We'll try to keep this friendly too.

3 A. That's what I'm hoping for.

4 Q. All right. Now, let's move to your  
5 discussion of capital structure. And I direct your  
6 attention to page 5 of your testimony. Do you have  
7 that?

8 A. Yes.

9 Q. Now, I know you gave us some errata  
10 earlier in the day, but I direct your attention to  
11 line 19 and suggest to you that you have reversed the  
12 percentages "56.25" and "43.75." Could you look at  
13 that and tell me if I'm correct?

14 A. Thank you. I wish I talked to you when I  
15 was making my errata.

16 Q. I wish you had too.

17 A. Yes. That's correct, it's 56.25 percent  
18 long-term debt and 43.75 percent equity.

19 Q. And as long as we're cleaning things up,  
20 at the start of that sentence on 17 you state "I  
21 found that FirstEnergy Witness Pearson's and the  
22 Staff's proposed capital structure as of May 31," and  
23 then you reference the numbers. You're not  
24 suggesting that the "56.25" and "43.75" is

1 Mr. Pearson's recommendation, are you?

2 A. No. Mr. Pearson didn't make that  
3 recommendation, but he included it in his analysis.  
4 That's what I meant here.

5 Q. Okay. Mr. Pearson's recommendation is  
6 reflected elsewhere in your testimony as being a  
7 "51/49," right?

8 A. 51/49, that's correct.

9 Q. Over on page 6 beneath your table in the  
10 note that begins on line 7 you state "Based on  
11 consolidated capital structure of FirstEnergy Corp.,  
12 Mr. Pearson recommends a hypothetical capital  
13 structure." Do you see that?

14 A. I see that.

15 Q. Okay. Now, the use of "hypothetical" is  
16 your characterization, isn't it?

17 A. Yes.

18 Q. Mr. Pearson or Dr. Vilbert don't refer to  
19 that as a hypothetical, do they?

20 A. They don't.

21 Q. Now, in your other -- I'm referring to  
22 your other Ohio testimony now, in the Ohio Water  
23 Company, if you recall, the Staff Report adopted the  
24 company's proposed cap structure and in your



1 testimony you agreed with that proposal, correct?

2 A. In the other water company?

3 Q. In Ohio Water Company.

4 A. Yes.

5 Q. And the same is true with respect to Aqua  
6 Ohio, correct?

7 A. That's correct.

8 Q. And it's also true with respect to Duke,  
9 Duke Energy as well.

10 A. But in Duke Energy for a different reason  
11 that you cannot obviously discuss here, the staff is  
12 not proposing to use the parent capital structure.

13 Q. The parent being Duke Corporation.

14 A. Duke Corporation.

15 Q. Yes. But I am correct that the staff --

16 A. That I adopted.

17 Q. Let me finish the question.

18 A. Sorry.

19 Q. That the staff adopted the company's  
20 proposed capital structure and that you agreed with  
21 that adoption by the staff.

22 A. That's correct.

23 Q. Okay. Now, will you agree with me that  
24 FirstEnergy Corp., our parent of the corporation, is

1 comprised of companies other than the Ohio EDUs which  
2 are the applicants in this proceeding?

3 A. Yes.

4 Q. And, in fact, following the restructuring  
5 of the electric industry in Ohio with Senate Bill 3  
6 FirstEnergy's generation assets and businesses are  
7 now in an unregulated affiliate that's a separate  
8 corporation from the Ohio EDUs, correct?

9 A. That's correct.

10 Q. And that the business risks that that  
11 generation affiliate faces are different than the  
12 business risks that the Ohio EDUs have, correct?

13 A. Correct.

14 Q. Turn to your page 12, please. I'm  
15 directing your attention to your table 2. Just as a  
16 point of clarification, Mr. Adams, as you list common  
17 equity ratios in the final column of your table,  
18 those are book ratios, correct?

19 A. Those are book ratios, yes.

20 Q. All right. And you'll agree with me that  
21 some of those ratios are greater than the 49 percent  
22 equity ratio that Mr. Pearson recommends here.

23 A. That's correct. I would just notice that  
24 among the nine companies you have two companies that

1 have a ratio that is higher than the 49 percent, but  
2 then the other companies, the seven companies, two of  
3 them have 50 percent which statistically may be the  
4 same thing as 49 percent, if you did an analysis.

5 So you have here five companies whose  
6 capital structure is below 44 percent including one  
7 that has 36 percent. So when you compare the  
8 average, it could be misleading so you have to really  
9 look at the whole picture.

10 Q. And simply as we do the mathematics, we  
11 get the average from the numbers that you have listed  
12 in your table, right?

13 A. Yes.

14 Q. Okay. Turn to page 16, please, of your  
15 testimony. And directing your attention to lines 1  
16 and 2, you tell us that "Firm risk is considered and  
17 is separated into business or market risk and  
18 financial risk." Do you have that?

19 A. Yes.

20 Q. Now, in the event of the dissolution or  
21 the bankruptcy of a company bondholders would have a  
22 preferred position to that held by stockholders with  
23 respect to distribution of the assets of the company,  
24 correct?

1 A. That's correct.

2 Q. And it's that priority in the payout of  
3 assets that gives rise to the concept of financial  
4 risk, correct?

5 A. That's correct.

6 Q. And the degree of financial risk is a  
7 function of the amount of debt leverage that's in the  
8 company's capital structure, correct?

9 A. Yes.

10 Q. And that's from the perspective of the  
11 equity investor.

12 A. That's correct.

13 Q. And as debt leverage increases, so would,  
14 according to the theory, financial risk, right?

15 A. The financial risk will increase in  
16 theory, but you have to look at the company as a  
17 whole. So you look at also not only the financial  
18 risk, but the liquidity of the company. So the  
19 financial risk really, although that's what most  
20 investors would be looking at, you have to go down  
21 one level and look at the liquidity of the company  
22 should the company go into bankruptcy, you look at  
23 what is the ability of selling the company's assets  
24 and turning into liquidity and be able to pay the

1 debt.

2 Q. You did agree with me that as debt  
3 leverage increases, so does financial risk from a  
4 theoretical standpoint, correct?

5 A. I agree, but what I'm trying to argue is  
6 that it's not like a one-on-one relationship.

7 Q. No; sure. But it goes in the same  
8 direction, correct?

9 A. Yes.

10 Q. Okay.

11 A. So the slope could be flatter for one  
12 company, it could be steeper for another company.

13 Q. And it might not even be a constant line,  
14 might be a curve.

15 A. It could be, yes.

16 Q. Okay. Now, on page 18 of your testimony,  
17 and I direct you to line 20, you seem to indicate  
18 that Dr. Vilbert uses book value for his  
19 determination of the capital structure with respect  
20 to debt. Do you see that?

21 A. Uh-huh.

22 Q. And is your opinion that he uses book  
23 value based on your reading of his testimony?

24 A. As far as I recall, he's using market

1 value for the capital structure in general for the  
2 common stock. I may be -- I may not have noticed,  
3 but I think as far as I can recall, he's using book  
4 value and adjusting that later when he turns into his  
5 analysis on converting using the 49/51 percent.

6 Q. Well, you did read Dr. Vilbert's  
7 testimony, correct?

8 A. Yes, I did.

9 MR. KORKOSZ: May I approach the witness,  
10 your Honor?

11 EXAMINER BOJKO: Yes, you may.

12 Q. Mr. Adams, I'm showing you what I will  
13 represent is Dr. Vilbert's Direct Testimony in this  
14 proceeding and in particular a portion of his  
15 Appendix B, page B-3, and direct your attention to  
16 the answer No. 5 that he has. Could you just read  
17 that to yourself for a moment, please.

18 EXAMINER BOJKO: Is this the Exhibit 8,  
19 the Direct Testimony, or the Supplemental --

20 MR. KORKOSZ: The Direct Testimony, your  
21 Honor, and it's in the appendices appended to there,  
22 page B-3, appendix B, page 3.

23 Q. I guess to move this along, Mr. Adams --

24 A. Yes.

1           Q.    -- would you agree with me that at lines  
2   13 to 14 Dr. Vilbert states, quote, "I estimate the  
3   capital structure for each company by estimating the  
4   market values of common equity, preferred equity and  
5   debt from publicly available data"? Did I read that  
6   correctly?

7           A.    Yes.

8           Q.    And at lines 18 through 21 on the same  
9   page Dr. Vilbert states, and I quote, "The market  
10   value of debt is estimated at the book value of debt  
11   reported by Bloomberg plus or minus the difference in  
12   estimated fair (market) value and book value of  
13   long-term debt as reported in the companies' 10-Ks or  
14   annual reports," close quote. Did I read that  
15   correctly?

16          A.    You read that correctly.

17          Q.    Turn to your page 19. Directing your  
18   attention to the sentence that begins on line 2 of  
19   that page, you state "The use of the market value  
20   capital structure to estimate the cost of equity is  
21   based on the underlying flawed assumption that the  
22   Commission is obligated to maintain current stock  
23   price levels and preserve the current relationship  
24   between revenues and stock prices through the test

1 year and beyond."

2 That's your testimony, right?

3 A. Yes.

4 Q. Okay. Would you agree with me that  
5 nowhere in his testimony does Dr. Vilbert suggest  
6 that assumption is the basis for his base of a useful  
7 market value capital structure?

8 A. Dr. Vilbert didn't make that assumption.

9 Q. I'm sorry?

10 A. Dr. Vilbert didn't make that assumption,  
11 however, it is my opinion that he's asking the  
12 Commission to make a commitment to confirm that  
13 investors' expectation bears on the market value  
14 today, which means that instead of the Commission  
15 setting a just and reasonable rate based on the book  
16 value, they are going to rubber stamp what the market  
17 is telling us that this is the value of the stock of  
18 FirstEnergy and, therefore, I want -- you want the  
19 Commission -- Dr. Vilbert wants the Commission to  
20 rubber stamp that commitment of the value of the  
21 price of FirstEnergy going forward, and that's my  
22 opinion and that I drew from using the market capital  
23 value.

24 Q. But you agree that Dr. Vilbert does not



1       assert that that is the basis for his use of the  
2       market value capital structure, correct?

3             A.    Yes.  I agree.

4             Q.    All right.  This is a minor point, but if  
5       you'd turn to page 32, directing your attention to  
6       line 13.

7             A.    Line?

8             Q.    13.

9             A.    Okay.

10            Q.    You make a reference to your Attachment  
11       ARA-4, page 5.  I suggest to you that that should be  
12       page 6 rather than page 5.  Could you check that  
13       quickly for me, please?

14            A.    That's correct.

15            Q.    All right.  I'm moving to your discussion  
16       of the adjustment to return on equity for service and  
17       reliability performance, all right?

18            A.    Okay.

19            Q.    Now, Mr. Cleaver is the OCC witness who  
20       reviewed the companies' reliability performance,  
21       correct?

22            A.    That's correct.

23            Q.    And that kind of analysis wasn't part of  
24       your responsibility in this case, correct?

1 A. That's correct.

2 Q. And on page 62 of your testimony where  
3 you begin your answer 74 on line 15 and going through  
4 to the sentence that ends on line 22, that is  
5 intended to be a summarization of portions of  
6 Mr. Cleaver's testimony, correct?

7 A. That's correct.

8 Q. And then beginning at line 22 it is based  
9 on Mr. Cleaver's findings that you recommend that the  
10 Commission approve the low end of your range of  
11 return, correct?

12 A. That's correct.

13 Q. And on page 63 you cite a portion of the  
14 Ohio Revised Code starting at line 11, right?

15 A. That's correct.

16 Q. And you refer a little bit earlier to  
17 your, quote, understanding of the link between  
18 adequate service and reasonable rates. Do you have  
19 that, it's line 8?

20 A. Yeah.

21 Q. You're not a lawyer, of course, correct?

22 A. I'm not a lawyer, that's correct.

23 Q. And your testimony here is not intended  
24 to offer a legal opinion or a legal interpretation of

1 the statutory provision, correct?

2 A. That's correct.

3 Q. Now on page 64 -- I'm sorry, 63 and 64 of  
4 your testimony you refer us to some cases where  
5 the -- this Commission has adopted the lower end --  
6 lower bound of the rate of return as a reflection on  
7 the company's service quality, correct?

8 A. That's correct.

9 Q. And you'll agree with me, won't you, that  
10 in deciding whether to adjust the allowed rate of  
11 return in any given case based upon considerations of  
12 service quality, that the Commission should consider  
13 the facts before it with respect to that particular  
14 utility, correct?

15 A. That's correct.

16 Q. Now, the Ohio Water case in which you  
17 presented testimony, you also determined a range of  
18 the cost of equity and recommended that the  
19 Commission go to the low end based on service quality  
20 considerations, right?

21 A. That's correct.

22 Q. And in the Duke Energy, the gas case, you  
23 came up with a range of recommendations for the cost  
24 of equity capital and you recommended going to the

1 low end there for a different reason, correct?

2 A. Yes, but I would like also to correct or  
3 ask for clarification on the previous question. Did  
4 you mean to talk about the Ohio American Water  
5 Company rate case or both water companies, Aqua Ohio  
6 and Ohio American?

7 Q. No, I was speaking strictly of the  
8 Ohio -- I think it's Ohio Water Company but it's part  
9 of the Ohio -- the water system, the first testimony  
10 that you filed.

11 A. That's Ohio Water.

12 Q. Ohio Water, yeah. And did you go to the  
13 low end of the range based on service quality  
14 considerations?

15 A. Yes, I did.

16 Q. In Duke you went to the low end of the  
17 range for a different reason, correct?

18 A. That's correct.

19 Q. In fact, the reason there wasn't service  
20 quality but because you believed the company would  
21 face reduced risk if certain of the proposals that it  
22 was making in its application would be adopted by the  
23 Commission, correct?

24 A. That's correct.

1 EXAMINER BOJKO: Mr. Korkosz, when you  
2 say "low end," are you talking about low end of  
3 Mr. Adams' range or the Staff Report?

4 MR. KORKOSZ: Yes. I was referring to  
5 his recommendation. I have not had in any of my  
6 questions a reference in the range of equity to what  
7 the staff had recommended.

8 Q. You understood that in your answers, did  
9 you not?

10 A. Yes.

11 EXAMINER BOJKO: But the low end of your  
12 range, not whatever low end is in the Staff Report,  
13 right?

14 THE WITNESS: Yes, of my range.

15 EXAMINER BOJKO: Just as in this case.

16 THE WITNESS: Yes.

17 EXAMINER BOJKO: Okay.

18 Q. And in answers to my questions that is  
19 the reference you had in responding to my questions,  
20 correct?

21 A. That's correct.

22 Q. All right. It would follow, wouldn't it,  
23 if a company is, in fact, facing increased risk  
24 rather than decreased risk, that the Commission might

1 well decide to move up in the range of the cost of  
2 equity to reflect what it perceived as increased  
3 risk? Would you agree with that?

4 A. As you probably saw in my testimony, I  
5 think the Commission should always adjust rate of  
6 return considering the reason it is being asked for  
7 the company, with the higher risk, I agree rate of  
8 return should be adjusted higher, with low risk, the  
9 adjustment should go the other way.

10 Q. And here we're considering business risk,  
11 correct? We spoke of financial risk earlier, and I'm  
12 just trying to distinguish that the kind of risk  
13 we're talking about now includes business risk,  
14 right?

15 A. Yes, we are talking about the business  
16 risk that is not -- cannot be diversified by the  
17 company.

18 Q. Okay. With some trepidation, Mr. Adams,  
19 I'm going to move into your discussion of CAPM.  
20 Would you turn to page 32 of your testimony. At the  
21 bottom of page 32 is where you begin a discussion of  
22 the capital asset pricing model, correct?

23 A. That's correct.

24 Q. Which for shorthand we'll refer to as the

1 CAPM, all right?

2 A. Yes.

3 Q. Okay. Now, the CAPM has three key  
4 inputs, does it not? It's the risk-free rate, Beta,  
5 and a market risk premium, right?

6 A. Yes.

7 Q. And on page 33 of your testimony at line  
8 11 you state, quote, "It should be noted that each of  
9 these three components" referring to the three I just  
10 mentioned, "must be a forward-looking estimate of  
11 investors' expectations in the respective areas in  
12 question," close quote. Correct?

13 A. You read the sentence right. May I --

14 Q. Okay. That was the extent of my  
15 question. You do state that in your testimony.

16 A. Yes, I state that.

17 Q. All right. Would you agree with me that  
18 when we speak of investor expectations, our  
19 perspective's forward-looking rather than  
20 historically?

21 A. Yes.

22 Q. Now, the market risk premium is the  
23 difference between the expected rate of return on a  
24 broad market portfolio, which I think you referred to

1 as risky assets, and the risk-free rate, correct?

2 A. That's correct.

3 Q. Now, on page 43 of your testimony you  
4 begin a discussion of the comparative accuracy of the  
5 use of arithmetic versus geometric means for the  
6 determination of the market risk premium, correct?

7 A. That's correct.

8 Q. Directing your attention to page 43,  
9 lines 9 and 10, you quote from a text "We believe" --  
10 this is the text by Thomas Copeland and others, the  
11 quotation is "We believe that the geometric average  
12 represents a better estimate of investors'  
13 expectations over long periods of time." Do you have  
14 that?

15 A. Yes.

16 Q. Now, the title of the text that that  
17 quotation is from is "Valuation" -- quote,  
18 "Valuation, Measuring and Managing the Value of  
19 Companies." That is the name of the book, right?

20 A. Yes.

21 Q. And you apparently consider this an  
22 authoritative source which supports your position on  
23 the issue which is the reason that you quote from it  
24 in your testimony, correct?



1           A.    Yes.  If I didn't believe that, I would  
2   not have used it.  That's correct.

3           Q.    Compare, if you would, please, in line 8  
4   the date of that volume you have is 1990 and compare  
5   that against the second line of your footnote 13 that  
6   seems to reference that text but with a date 1994.  
7   That seems to me to -- they don't seem to line up.  
8   Do you know which is the right date?  I'll note you  
9   have the same page numbers, but the date seems to be  
10  different.

11          A.    Yeah.  The date seems to be different.  I  
12  cannot -- it could be either one, but I will have to  
13  look at the article again.  This is a typo so it  
14  cannot be 1990 and 1994 at the same time.

15               MR. KORKOSZ:  May I approach the witness,  
16  your Honor?

17               EXAMINER BOJKO:  Yes, you may.

18          Q.    Mr. Adams, I'm going to show you what I  
19  represent to be the cover page, the flip side of the  
20  cover page which shows the copyright date, and then  
21  the entirety of chapter 6 of what I will represent is  
22  the text "Valuation, Measuring and Managing the Value  
23  of Companies" by Thomas Copeland and others and ask  
24  if you would verify that that is the 1990 volume of

1 that text from which you draw your quotation.

2 A. Yes.

3 Q. And just to put it in context, you have  
4 it there, will you agree with me that that particular  
5 quotation is contained within what is chapter 6 of  
6 the text which is entitled "Estimating the Cost of  
7 Capital" beginning at page 171, correct?

8 A. Yes.

9 Q. And on page 193, which is where your  
10 quotation derives from, that is contained in the  
11 section of that text that has a heading, quote,  
12 "Determining the market risk premium," correct?

13 A. That's correct.

14 Q. Can I take that back from you?

15 A. Yeah.

16 Q. Actually, you go ahead and hang onto it.

17 EXAMINER BOJKO: So which is the correct  
18 copyright date?

19 THE WITNESS: It's 1990.

20 EXAMINER BOJKO: '90?

21 THE WITNESS: Yes.

22 Q. Actually, there is a 1994 edition of the  
23 Copeland text that is a second edition, if you know.  
24 Do you know whether there is a second edition of the

1 text?

2 A. There could be.

3 Q. And let's move it along. You can check  
4 this, but would you turn to page 239 of that text and  
5 verify for me that there is at that page the  
6 beginning of a chapter that is comparably titled  
7 "Estimating the Cost of Equity Capital," except this  
8 time it's chapter 8?

9 A. On page 239?

10 Q. Page 239.

11 A. That's correct, yes.

12 Q. And a discussion -- if you turn to page  
13 258, you have a discussion that begins with the CAPM  
14 methodology, correct?

15 A. That's correct.

16 Q. And flipping over to page 260, just a  
17 couple of pages beyond, we have a heading and the  
18 beginning of a discussion on determining the market  
19 risk premium, correct?

20 A. That's correct.

21 Q. And there are some bullet points which  
22 follow in the text in which just before the bullet  
23 points start the authors indicate they will, and I  
24 quote, "elaborate on their reasoning in detail,"

1 close quote. Do you see that?

2 A. I see that.

3 Q. And, in fact, at the end of the second  
4 bullet they reproduce the same quotation you have in  
5 your testimony, right?

6 A. I saw that.

7 Q. Okay. So the second edition also is  
8 consistent with the quotation that's in your  
9 testimony, right?

10 A. That's correct.

11 Q. Okay. Are you aware that there is a  
12 third edition of "Valuation, Measuring and Managing  
13 the Value of Companies" that is published by the  
14 authors?

15 A. Again, as I say, I believe I have  
16 actually the most recent book in my office.

17 Q. Let me show you.

18 A. Is this 2006 or 2007?

19 Q. I would suggest to you that the book I am  
20 holding in my hand has a copyright date of 2000.

21 A. 2000.

22 Q. Let me show this to your counsel before  
23 we go on.

24 Mr. Adams, having shown what I'm holding

1 to your counsel already, I would ask you to take a  
2 look at it and suggest to you that this is a third  
3 edition of the authors volume that we've been talking  
4 about and ask you just to confirm for me that it is,  
5 in fact, the third edition of that book, and if you  
6 look on the inside front cover, it will demonstrate  
7 the copyright is the year 2000.

8 A. That's correct.

9 Q. Do you recall whether you've read this or  
10 at least the portion that deals with the development  
11 of a market risk premium?

12 A. Can you repeat the question?

13 Q. Let me withdraw that and do this another  
14 way. Would you turn to page 201. Would you agree  
15 with me that on page 201 we begin a chapter that as  
16 before is entitled "Estimating the Cost of Capital"?

17 A. Yes.

18 Q. And at page 216 of the text there's a  
19 section that as before is entitled "Determining the  
20 market risk premium"?

21 A. Yes.

22 Q. And like the second edition that we just  
23 spoke about it has some bullets that follow on page  
24 217 that sets out and here the words are, "a series

1 of" -- the author is explaining, quote, "a series of  
2 choices that we make to arrive at our estimate." Do  
3 you see that?

4 A. Yes.

5 Q. And in the second bullet under that  
6 series of choices on page 217 the authors state, do  
7 they not, "We use an arithmetic average of rates of  
8 return because the CAPM is based on expected returns  
9 which are forward-looking"? Did I read that  
10 correctly?

11 A. That's correct. But I would --

12 Q. And on page 219 of the third --

13 MR. REESE: Objection. Can the witness  
14 finish his answer, please?

15 MR. KORKOSZ: I believe the witness did  
16 finish his answer.

17 THE WITNESS: I didn't finish, sir.

18 Q. All right, go ahead.

19 A. Can I supplement my answer? It's not  
20 unusual that scores change the opinion --

21 EXAMINER PRICE: I don't think the  
22 Examiner ruled yet.

23 EXAMINER BOJKO: I was going to say that  
24 counsel should be addressing the Bench, not each

1 other, first of all. Secondly --

2 MR. KORKOSZ: I apologize, your Honor.

3 EXAMINER BOJKO: -- I believe that the  
4 witness did answer, it was a "yes" or "no," question,  
5 and I was going to let that stand until Mr. Korkosz  
6 said he could continue.

7 MR. KORKOSZ: I spoke too soon.

8 Q. Mr. Adams, go ahead.

9 A. On the same page, the next bullet, the  
10 author adjusts downward by 1-1/2 to 2 percentage  
11 points because of the survivorship bias that is  
12 included in using historical return. So --

13 Q. Survivorship bias is a different topic  
14 than the choice between arithmetic and geometric  
15 means, isn't it?

16 A. It's a different topic, that's correct.

17 Q. Now, if you turn -- open it back up, if  
18 you turn to page 219, please, and about 2/3 of the  
19 way down the page at the end of -- there are two  
20 indentations at the bottom, I'm just above that, the  
21 sentence that begins "Although." Do you have that?

22 A. Which page, 219?

23 Q. Page 219.

24 A. Okay.

1 Q. There's a sentence that begins  
2 "Although." Do you have that?

3 A. Yeah.

4 Q. The sentence from page 219 is that  
5 "Although the geometric return is the correct measure  
6 of historical performance, it is not forward  
7 looking." Did I read that correctly?

8 A. Yes.

9 Q. Would you accept, subject to check, that  
10 the quotation that you have in your testimony from  
11 the first and second edition doesn't appear anywhere  
12 at all in the third edition?

13 A. I would accept that subject to check.

14 Q. Thank you.

15 EXAMINER BOJKO: I'm sorry, Mr. Adams. I  
16 don't think I ever heard you answer Mr. Korkosz's  
17 question about whether you read that third edition.  
18 Have you read the third edition?

19 THE WITNESS: Your Honor, as I say, I  
20 believe that's the most -- I may have it, but I may  
21 not have read that particular subject.

22 EXAMINER BOJKO: Okay. And so your  
23 testimony, your one quote though, it was the intent  
24 that you were referencing the first edition, the



1 1999 -- or, 1990, excuse me.

2 THE WITNESS: Both the first and second  
3 edition, yes, either one.

4 EXAMINER BOJKO: But which one did you  
5 quote from?

6 THE WITNESS: I believe it is the first  
7 edition, although there is a typo in the footnote  
8 which references the second edition because the date  
9 is the correct date, 1990, and the page is correct,  
10 so I believe that there was a typo at the bottom in  
11 the footnote.

12 EXAMINER BOJKO: Thank you.

13 Q. (By Mr. Korkosz) Mr. Adams, let's turn to  
14 your page 21 where you begin to discuss the ECAPM  
15 model. Do you have that?

16 A. Yes.

17 Q. And this is -- the ECAPM is a model which  
18 Dr. Vilbert introduces in the course of his  
19 testimony, correct?

20 A. That's correct.

21 Q. And the E in ECAPM stands for empirical,  
22 right?

23 A. That's correct.

24 Q. Otherwise it would be -- the long version

1 would be the empirical capital asset pricing model,  
2 correct?

3 A. Correct.

4 Q. One of the criticisms on page 23 of your  
5 testimony that you raise is Dr. Vilbert's use of  
6 "Value Line" Betas in calculating the -- in the use  
7 of the ECAPM methodology, right?

8 A. That's correct.

9 Q. And, in fact, you raise those same  
10 criticisms in the testimony that you offer in the  
11 Duke Energy case, correct?

12 A. Correct.

13 Q. There, however, it's not Dr. Vilbert but  
14 you're offering it in response to Dr. Roger Morin who  
15 happens to be Duke's expert in the case, right?

16 A. Yes. I hesitated a little bit because  
17 they presented it slightly different, but the  
18 objective was the same. So yes.

19 Q. But directing your attention to the  
20 discussion and the point of the criticism you make on  
21 page 23, that's the same in both cases, is it not?

22 A. That's correct.

23 Q. And, in fact, your testimony there is  
24 virtually identical for page 23 except that you refer

1 to Dr. Morin rather than Dr. Vilbert, right?

2 A. Subject to check.

3 Q. Have you heard of a rate-of-return  
4 witness named Basil Copeland? Have you ever heard of  
5 the gentleman?

6 A. What's his first name?

7 Q. Basil, B-a-s-i-l. Basil, perhaps.

8 A. I don't recall -- I don't recall his  
9 name, although you probably know that they have  
10 thousands of rate of return witnesses around the  
11 United States.

12 Q. Perhaps something of an overstatement,  
13 but there are a great many.

14 A. Yes.

15 Q. Would you -- incidentally -- well, I'll  
16 withdraw that.

17 Would you accept, subject to check, that  
18 Basil Copeland filed testimony at the New Jersey  
19 Board of Public Utilities in September 2002 in a rate  
20 case of Elizabethtown Gas Company and that testimony  
21 can be readily downloaded from the website  
22 maintained --

23 EXAMINER PRICE: Mr. Korkosz, if you  
24 could wait for a second. I think we're going to get

1 an important message.

2 (Off the record.)

3 EXAMINER PRICE: My apologies,  
4 Mr. Korkosz.

5 Q. Should we return to normal operations,  
6 Mr. Adams?

7 A. Yes.

8 Q. The question I posed to you was would you  
9 accept, subject to check, that Basil Copeland filed  
10 testimony at the New Jersey Board of Public Utilities  
11 in September 2002 in an Elizabethtown Gas Company  
12 rate case and that testimony can be readily  
13 downloaded from the website maintained by the New  
14 Jersey Division of Ratepayer Advocates?

15 MR. REESE: Objection, your Honor,  
16 relevance.

17 MR. KORKOSZ: I'm laying a foundation,  
18 your Honor. I'll tie it up in a couple of questions,  
19 if I may be permitted.

20 EXAMINER BOJKO: Overruled for the time  
21 being.

22 Q. Would you accept that subject to check,  
23 sir?

24 A. Yes.

1           Q.    Would you further accept, subject to  
2   check, that your testimony on page 23, lines 9  
3   through 19, is verbatim the testimony that  
4   Mr. Copeland filed in 2002 in that case except that  
5   he referred to Dr. Morin instead of Dr. Vilbert in  
6   three places that you reference Dr. Vilbert in those  
7   lines 9 through 19? And I have that testimony  
8   available if you'd like to check it.

9           A.    Well, I have never heard of the  
10   gentleman, but subject to check I can look and see if  
11   they're the same thing.

12               MR. KORKOSZ: Mr. Reese, excuse me a  
13   minute. I represent that I am giving the witness an  
14   identical copy of what I've presented to you.

15           A.    What's the page number?

16           Q.    Turn to page 21, please.

17               EXAMINER BOJKO: Do you have a copy for  
18   the Bench?

19               MR. KORKOSZ: Excuse me, your Honor.

20           Q.    Mr. Adams, have you had a chance to look  
21   at that?

22           A.    I did.

23           Q.    My question was, would you accept -- at  
24   the time it was subject to check but apparently you

1 checked if now, that your testimony on page 23, lines  
2 9 through 19, is verbatim the testimony that  
3 Mr. Copeland filed in the Elizabethtown Gas case  
4 except for the references to Dr. Morin versus  
5 Dr. Vilbert?

6 A. It looks like it, almost everything  
7 matches, yeah.

8 Q. Someone coughed, I'm sorry.

9 A. I say it looks like it, every line  
10 matches. But I never had it, never have heard of  
11 Mr. Copeland.

12 Q. Would you agree with me if you open back  
13 up, and perhaps you can turn to the prior page, that  
14 your testimony lines 1 through 4 on your page 23  
15 matches on page 20 of Mr. Copeland's testimony, his  
16 page 20, lines 18 through 21 except, again, for the  
17 references to Dr. Morin versus Dr. Vilbert?

18 A. Yes.

19 MR. KORKOSZ: Thank you very much,  
20 Mr. Adams. I have no further questions.

21 MR. REESE: Your Honor, can we have a  
22 short break to consider redirect?

23 EXAMINER BOJKO: Staff has a turn first,  
24 but I have a quick question.

1           Mr. Adams, did you go through and read  
2 these line by line, because I see slight differences  
3 and I just want to make sure that . . .

4           Were you looking at page 1 of Dr. Basil  
5 Copeland's testimony and comparing that to page 23 of  
6 yours? Is that the paragraph that we were comparing?  
7 Mr. Adams.

8           THE WITNESS: Yes.

9           EXAMINER BOJKO: Is that what Mr. --

10          THE WITNESS: I don't have the copy  
11 anymore.

12          MR. KORKOSZ: I'm sorry.

13          EXAMINER BOJKO: Oh, I'm sorry.

14          MR. KORKOSZ: Let me make sure I'm giving  
15 you the right one.

16          EXAMINER BOJKO: For instance, line 11 is  
17 slightly different, line 11 on your page 23 versus  
18 line 6 on Copeland's page 21. Is that right?

19          THE WITNESS: Yeah, that's correct.

20          EXAMINER BOJKO: So it's very similar,  
21 but maybe not identical?

22          THE WITNESS: My response to this is that  
23 this is a subject in finance.

24          EXAMINER BOJKO: No, no. I asked you,

1 Mr. Adams.

2 THE WITNESS: It's similar. I agree,  
3 it's similar but not identical.

4 EXAMINER BOJKO: Thanks.

5 Staff have any questions?

6 MR. JONES: No questions, your Honor.

7 EXAMINER BOJKO: Now you may have five  
8 minutes to consider redirect.

9 MR. REESE: Yes.

10 EXAMINER BOJKO: Let's take a six-minute  
11 break, 11:40.

12 (Recess taken.)

13 EXAMINER BOJKO: Let's go back on the  
14 record.

15 Does OCC have any redirect?

16 MR. REESE: Yes, your Honor.

17 - - -

18 REDIRECT EXAMINATION

19 By Mr. Reese:

20 Q. Mr. Adams, if I could direct your  
21 attention to page 5 of your testimony.

22 A. Yes.

23 Q. On cross-examination you noted that your  
24 two figures in line 19 of the testimony, the



1 56.25 percent and the 43.75 percent, were juxtaposed;  
2 is that correct?

3 A. That's correct.

4 Q. Does that affect any of your other  
5 analysis or recommendations in this case?

6 A. It didn't affect any of my analysis or  
7 the results from the analysis.

8 Q. So it was just a typographical error?

9 A. That's correct.

10 Q. Thank you.

11 Mr. Adams, there were several questions  
12 regarding the publications by Copeland, Koller, and  
13 Murrin referred to on page 43 of your Direct  
14 Testimony. Do you recall that?

15 A. Yes, I do.

16 Q. And you discussed a series of articles or  
17 publications.

18 A. Yes.

19 Q. In the preparation of your testimony did  
20 you rely solely on the publications by these authors?

21 A. Do you mean by Copeland, Koller, and  
22 Murrin?

23 Q. Yes.

24 A. No. No.

1           Q.    Can you give me examples of some of the  
2 other experts you relied on?

3           A.    I did a number of research on this  
4 subject of geometric and arithmetic means and I  
5 relied on all the expertise such as the  
6 publication -- the article that was published by  
7 Carleton and Lakonishok in 1994, or the article that  
8 was also was published by the same authors in 1985,  
9 and most recently the quote that I have on page 45  
10 from Professor Damodaran. There are others that I  
11 didn't cite that have the same conviction that the  
12 geometric mean is the best to use in CAPM model  
13 because they represent better the expectations of the  
14 investors.

15           Q.    Now, on page 5 of your testimony -- page  
16 43, line 5, "The geometric mean method is the method  
17 that is consistent with the return rate that should  
18 be applied to rate base," is that a fairly wide held  
19 belief amongst academics and other experts in this  
20 area, to your knowledge?

21           MR. KORKOSZ: I object.

22           EXAMINER BOJKO: Grounds?

23           MR. KORKOSZ: The question is beyond the  
24 scope of cross-examination.

1 EXAMINER BOJKO: Would you reread the  
2 question, Maria, please.

3 (Record read.)

4 EXAMINER BOJKO: Do you have a response,  
5 Mr. Reese?

6 MR. REESE: Your Honor, I believe there  
7 were a series of questions from counsel for  
8 FirstEnergy regarding the application of the  
9 geometric mean method.

10 EXAMINER PRICE: Mr. Korkosz.

11 MR. KORKOSZ: The questions were directed  
12 to the reliance by the witness on a particular  
13 reference source and the examination of whether the  
14 authoritative source upon which he relied had changed  
15 their views. It was limited solely to that set of  
16 authors and did not expand into a general discussion  
17 of the subject of arithmetic versus geometric mean  
18 nor did it examine the other sources or any other  
19 references.

20 EXAMINER BOJKO: Objection sustained.

21 Q. (By Mr. Reese) Mr. Adams, let's look at  
22 line 9 of your testimony on page 43, there's a quote  
23 there from the Copeland and Koller articles --  
24 Copeland, Koller, and Murrin you were questioned on

1 earlier, the quote is "We believe the geometric  
2 average represents a better estimate of investors'  
3 expectations over long periods of time"; is that  
4 correct?

5 A. That's correct.

6 Q. Are other experts that you have relied  
7 on, do they hold this same opinion?

8 MR. KORKOSZ: I object. Same grounds.

9 MR. REESE: Your Honor, if I --

10 EXAMINER BOJKO: Overruled. That one's  
11 fair. You can answer.

12 A. Yes. The expert that -- there are many  
13 other experts that I relied upon that hold the same  
14 point of view that basically the arithmetic mean  
15 tends to overstate the expectations of the investors  
16 and that because the CAPM is not a one-period model  
17 but rather a model for multiperiods, the theory is  
18 that investors don't buy and trade it back after one  
19 year, but they buy the stock and hold it for long  
20 periods and then that means there is some  
21 reinvestment of some of the dividends, the return on  
22 capital, that is reinvested. And then you look at  
23 your expectation at the end of that period.

24 So it's the buy and hold theory rather

1     than the buy and trade every period and go back to  
2     your portfolio. So basically that's the basis for  
3     the geometric average being a better representation  
4     of investors' expectations.

5                     MR. REESE: Thank you, Mr. Adams.

6                     No further questions, your Honor.

7                     EXAMINER BOJKO: Do you have any -- any  
8     parties have any recross?

9                     I have a couple questions.

10                    - - -

11                    EXAMINATION

12     By Examiner Bojko:

13                    Q. Mr. Adams, on page 45, the article that  
14     you just referenced, what is the year of the article  
15     quoted from Professor Damodaran?

16                    A. This is current because he has --  
17     Professor Damodaran has a website where he updates on  
18     a regular basis his views and publications and so  
19     this is like an internet article that is updated on a  
20     regular basis. So I would say 2007 at the time when  
21     I used his quote.

22                    Q. Okay. So the date of the quote you  
23     believe was sometime in 2007?

24                    A. Yes.

1           Q.    Look at page 65 of your testimony.  I  
2 believe you answered this previously to one of my  
3 questions during Mr. Korkosz's examination, but just  
4 to be clear -- actually, no, I think we need to clear  
5 that up.

6                   In your testimony I believe that the  
7 water company rate case on 65, that the Commission  
8 adopted -- there might be a difference of what you  
9 proposed versus what the Commission adopted.  The  
10 Commission adopted the low end of the Staff Report in  
11 that case as well as I believe there's one cited on  
12 page 64; is that right?

13           A.    That's correct.

14           Q.    But in this case you're not asking us to  
15 adopt the low end of the Staff Report, you're asking  
16 us to go even lower and adopt the low range of your  
17 proposal; is that right?

18           A.    As an expert witness I am presenting my  
19 recommendation to the Commission to adopt my range,  
20 however, should the Commission adopt a different  
21 range, for example, the staff range, my  
22 recommendation would be the same, that they approve  
23 the low end of the rate of return for the same  
24 reasons.

1 Q. In that answer I believe it's implicitly  
2 stated that your range is below the staff's range  
3 proposed in this case.

4 A. Based on the initial Staff Report.

5 Q. Yes.

6 A. I have not had the chance to review  
7 Mr. Cahaan's testimony.

8 Q. Based on the initial Staff Report.

9 A. That's correct.

10 Q. Okay. I don't believe you were in the  
11 room -- or were you in the room during Mr. Vilbert's  
12 testimony at the hearing?

13 A. No. I was sick during that week.

14 Q. Did you happen to read the transcript of  
15 the discussion regarding the POLR risk --

16 A. Yes.

17 Q. -- provider of last resort risk?

18 A. Yes, I did.

19 Q. Do you agree with -- it's been a long  
20 time now. Do you agree with Mr. Vilbert's conclusion  
21 regarding the provider of last resort risk and how  
22 that risk affects the rate of return?

23 A. I agree with the theory, for example, a  
24 vertical integrated utility, in this case for a

1 distribution utility the provider of last resort is a  
2 matter of generation that is a -- should be or have  
3 been addressed in a different case.

4 So if a utility's vertically integrated,  
5 generation, transmission, distribution, then the  
6 provider of last resort becomes an issue in that rate  
7 case because everything is one unit, but in this case  
8 it should not be an issue because the risk of the  
9 generation part of FirstEnergy is not rated to the  
10 risk of the distribution company.

11 Q. And is that statement true given that the  
12 distribution company has the ultimate obligation,  
13 that POLR obligation?

14 A. The distribution company has ultimate  
15 responsibility, but this is a case of like a  
16 pass-through. So on my bill as a customer, I should  
17 not see the POLR charge for distribution, I should  
18 see that in the section of generation.

19 Q. And I also had a discussion with  
20 Dr. Vilbert about pending energy legislation. Do you  
21 agree with his assessment that the pending  
22 legislation adds risk that should be considered in  
23 this case when deciding the rate of return?

24 A. I do not agree with him 100 percent on



1     that subject. In finance the stock market, for  
2     example, they look at the rate structure, the  
3     legislature, when it is signed into law, when it  
4     becomes effective in a state of where it is going to  
5     be applied.

6             At this point it is a matter for  
7     discussion, it could be approved next month, it could  
8     be approved next year. So at this time when I look  
9     at the report from like S&P or the other analysts,  
10    they are looking at that as a possibility depending  
11    on what would be the outcome.

12            But if the distribution portion remains  
13    regulated, the risk is not going to be the same as  
14    the generation portion if the generation portion goes  
15    on the market.

16            EXAMINER BOJKO: Thank you.

17            MR. KORKOSZ: May I have a clarification,  
18    your Honor?

19            EXAMINER BOJKO: Limited, yes.

20                           - - -

21                    RE CROSS-EXAMINATION

22    By Mr. Korkosz:

23            Q. Did I just understand you, Mr. Adams, to  
24    say that the -- you spoke of S&P, I believe, just a

1 moment ago, a rating agency, did I understand you to  
2 say that the rating agencies, and I suppose  
3 investment analysts generally are aware that there is  
4 legislation pending in Ohio?

5 A. Investment analysts track this kind of  
6 activity, yes, they are aware.

7 Q. Thank you. No --

8 A. But then --

9 MR. KORKOSZ: That was my clarification.  
10 Thank you.

11 EXAMINER BOJKO: You may step down,  
12 Mr. Adams.

13 THE WITNESS: Thank you.

14 EXAMINER BOJKO: OCC, would you like to  
15 move your testimony at this time?

16 MR. REESE: Yes, your Honor. At this  
17 time OCC moves for the admission of OCC Exhibits 2  
18 and 2A.

19 MR. KORKOSZ: I assume that is with the  
20 exception of Attachment ARA-9 and the portions of  
21 testimony which we discussed at the commencement of  
22 his cross.

23 EXAMINER BOJKO: Yes.

24 Does anybody oppose the admission of

1 Exhibit 2, 2A with the caveat or with the exception  
2 of the portions that have already been stricken?

3 Hearing no opposition, those will be  
4 admitted except for the portions that have been  
5 stricken.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER BOJKO: Let's go off the record  
8 for a moment.

9 (Discussion off the record.)

10 EXAMINER BOJKO: Let's come back at 1:15.

11 (At 12:09 p.m., a lunch recess was taken  
12 until 1:15 p.m.)

13 - - -  
14  
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24

1 Tuesday Afternoon Session,  
2 February 12, 2008.

3 - - -

4 EXAMINER PRICE: Let's go on the record.

5 EXAMINER BOJKO: Mr. Cleaver, could you  
6 raise your right hand.

7 (Witness sworn.)

8 EXAMINER BOJKO: You may be seated.

9 MR. REESE: Your Honor, the OCC calls  
10 David Cleaver to the stand and would like his  
11 prepared testimony marked as OCC Exhibit 4 and his  
12 corrections marked as OCC Exhibit 4A.

13 EXAMINER BOJKO: For identification  
14 purposes OCC Exhibit 4, which will be the Direct  
15 Testimony of Mr. Cleaver, and the correction sheet  
16 will be marked as OCC Exhibit 4A.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 - - -

19 DAVID W. CLEAVER

20 being first duly sworn, as prescribed by law, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Reese:

24 Q. Please state your full name and business

1 address for the record.

2 A. My name is David Cleaver. I work for the  
3 Ohio Office of Consumers' Counsel that's located at  
4 10 West Broad Street in Columbus, Ohio.

5 Q. Are you the same David Cleaver whose  
6 prepared testimony was filed on January 10th, 2008,  
7 in this case?

8 A. Yes.

9 Q. On whose behalf do you appear?

10 A. The Office of Ohio Consumers' Counsel.

11 Q. Do you have your prepared testimony with  
12 you on the stand?

13 A. Yes.

14 Q. Mr. Cleaver, is your mike on?

15 EXAMINER BOJKO: Let's go off the record.

16 (Off the record.)

17 EXAMINER BOJKO: Let's go back on the  
18 record.

19 Q. Mr. Cleaver, do you have your prepared  
20 testimony with you on the stand?

21 A. Yes, I do.

22 Q. Did you prepare the testimony or have it  
23 prepared at your direction?

24 A. Yes.

1 Q. Do you have any changes or corrections to  
2 your prepared testimony?

3 A. Yes, I do.

4 If you can turn to page 23, lines 12 and  
5 14, beginning at the word "however" and change that  
6 line to read "When the companies index of SAIFI  
7 increases, it would follow that the frequency of  
8 momentary outages has also increased  
9 proportionately," basically striking the reference to  
10 CAIDI.

11 Q. Are there any other changes?

12 A. Yes. On page 25, line 2, delete the word  
13 "five" and replace it with the word "six."

14 Q. Mr. Cleaver, if I asked you today the  
15 same questions found in your prepared testimony as  
16 modified by your corrections, would your answers be  
17 the same?

18 A. Yes.

19 MR. REESE: The OCC moves for admission  
20 of OCC's Exhibit 4 and 4A and tenders the witness for  
21 cross-examination.

22 EXAMINER BOJKO: We will defer ruling on  
23 the motion for admission until cross-examination has  
24 occurred.

1                   Let's begin with IEU. Do you have any  
2 cross-examination of this witness?

3                   MR. NEILSEN: No, your Honor.

4                   EXAMINER BOJKO: Schools?

5                   MR. BREITSCHWERDT: We do not, your  
6 Honor.

7                   EXAMINER BOJKO: Company?

8                   MS. MILLER: Yes, we do, your Honor.

9                   EXAMINER BOJKO: Please proceed.

10                   - - -

11                   CROSS-EXAMINATION

12 By Ms. Miller:

13                   Q. Good morning, Mr. Cleaver. How are you  
14 today?

15                   A. I'm fine.

16                   Q. You started your career with Kentucky  
17 Utilities as a Distribution Engineer, correct?

18                   A. That's correct.

19                   Q. And you had oversight responsibility for  
20 underground residential distribution, right?

21                   A. That was part of my responsibility.

22                   Q. And then after four years, you went to  
23 Kentucky Power as a Distribution Engineer, correct?

24                   A. Correct.

1           Q.    And your duties as a Distribution  
2 Engineer, they were similar to the ones you had in  
3 your prior position at Kentucky Utilities; is that  
4 correct?

5           A.    Not entirely.

6           Q.    But they were similar? Excuse me, were  
7 they similar?

8           A.    Only in regard to the underground  
9 residential distribution facilities were they  
10 similar.

11          Q.    And you had oversight responsibility with  
12 respect to new lines, line extensions, and O&M on  
13 existing facilities; is that correct?

14          A.    That's correct.

15          Q.    And about four years after that you  
16 became a Power Engineer at Kentucky Power; is that  
17 correct?

18          A.    Yes.

19          Q.    And that was a position in the Customer  
20 Services Department where you negotiated contracts  
21 with large power customers and otherwise assisted  
22 them with their concerns, right?

23          A.    That's correct.

24          Q.    And after four more years, you went to



1 AEP Service Company as a project manager, correct?

2 A. That was my first position there, yes.

3 Q. And your job there was to oversee  
4 engineering, design, and construction performed by  
5 other departments for particular projects; is that  
6 correct?

7 A. That's right.

8 Q. Then after another seven or eight years,  
9 you became a Control Engineer for AEP; is that  
10 correct?

11 A. Approximately, yes.

12 Q. And that was primarily a financial job  
13 where you assisted in the preparation of budget  
14 estimates, correct?

15 A. That's correct.

16 Q. And you left AEP in 1995, correct?

17 A. Yes.

18 Q. And that was your last employment by a  
19 utility company, correct?

20 A. If you mean electric utility company,  
21 yes.

22 Q. Yes. Thank you for the clarification.

23 You then became a Plan Examiner for the  
24 City of Columbus and later the State of Ohio,

1 correct?

2 A. Yes.

3 Q. And both of those jobs involved a review  
4 of construction documents for compliance with  
5 applicable building codes in compliance with the  
6 National Electric Code; is that correct?

7 A. That's part of it.

8 Q. Including any power reliability  
9 requirements that might be imposed by the Ohio  
10 building codes, correct?

11 A. It also included the review of the actual  
12 construction of distribution lines in addition with  
13 reviewing reliability issues as it related to the  
14 building code and the National Electric Code.

15 Q. And your reliability-related experience  
16 in the past 12 years was in the context of ensuring  
17 compliance with the Ohio building code and the  
18 National Electric Code, correct?

19 A. That's primarily correct, yes.

20 Q. And in your past utility experience you  
21 have not been directly responsible for a company  
22 meeting its reliability targets, have you?

23 A. Could you be specific about "directly  
24 responsible"?

1 Q. Has it been your responsibility to  
2 oversee that the electric utility met its targets?

3 A. Could you specify "targets"?

4 Q. I'll strike that question and ask a  
5 different question.

6 In your past utility experience have you  
7 been in a position where a state regulatory  
8 commission has set targets for the utility and it has  
9 been your job to see that your section or division  
10 met that target?

11 A. Not direct responsibility, no.

12 Q. Have you been responsible for  
13 establishing written maintenance practices to be  
14 submitted to a state regulatory commission?

15 A. No.

16 Q. Have you been responsible for meeting  
17 with staff of a regulatory commission to discuss the  
18 details and contents of a utility's written  
19 maintenance program?

20 A. No.

21 Q. No. Turning to your testimony, on page  
22 2, lines 17 and 18, you indicate that you evaluated  
23 reliability-related policies and practices applied to  
24 the Commission's distribution systems. Do you see

1 that?

2 A. Page 2, line?

3 Q. Lines 17 and 18.

4 A. Okay, thank you.

5 Q. Do you see that?

6 A. Yes.

7 Q. This means you read the Staff Reports and  
8 the applicable Ohio Administrative Code sections; is  
9 that correct?

10 A. Among other things.

11 Q. And what you know about the companies'  
12 reliability-related practices is limited to what you  
13 read in the Staff Reports; is that correct?

14 A. No.

15 Q. Is what you know about the companies'  
16 reliability-related practices limited to the Staff  
17 Reports, the staff workpapers, the ESS rules, and the  
18 UMS report?

19 THE WITNESS: Could you read those back,  
20 please?

21 Q. I can. Is your knowledge related to the  
22 companies' reliability-related practices limited to  
23 what you read in the Staff Report, the staff  
24 workpapers, the ESSS rules, and the UMS report?

1 A. As it relates directly to this case.

2 Q. And is what you know about staff's  
3 investigation based on your review of the Staff  
4 Report and the staff workpapers that were made  
5 available to you?

6 A. Could you repeat that, please?

7 Q. I can. And what you know about staff's  
8 investigations in this case, is it limited to what  
9 you read in the Staff Report and reviewed in the  
10 staff workpapers that were provided to you?

11 A. To the extent that there may have been  
12 some corroboration of staff's comments, and in the  
13 UMS report I would include that also but mainly the  
14 Staff Report, that was the main document that I  
15 relied on.

16 Q. You address the company's record-keeping  
17 systems and policies on page 14 of your testimony; is  
18 that correct?

19 A. Give me a reference, please.

20 Q. Lines 16 through 20.

21 A. Yes, I believe item 1, problems with  
22 record-keeping. Is that what you're referring to?

23 Q. That's correct.

24 A. Yes.

1 Q. And what you know about the companies'  
2 record-keeping systems and policies is based on what  
3 you read in the Staff Report, correct?

4 A. Again, as it relates to this case, yes.

5 Q. On page 14, lines 16 through 19 of your  
6 testimony, you state that FirstEnergy's  
7 record-keeping systems and policies on a companywide  
8 basis are inadequate for the purpose of verifying the  
9 companies' reliability performance. Do you see that?

10 A. Yes, I do.

11 Q. However, reliability performance is not  
12 verified from a company's record-keeping system, is  
13 it?

14 A. Well, reliability performance would  
15 require certain records to evaluate, but in the  
16 context here I believe we're talking about the  
17 inspection programs under Rule 27(D) and (E), and in  
18 that regard they would not be used to evaluate the  
19 indices.

20 Q. You also state on page 17 at lines 10  
21 through 12 that if records are compromised, there is  
22 no way to verify how well the system is or is not  
23 performing. Do you see that?

24 A. Yes.

1 Q. However, adherence to the record  
2 retention requirement and the analysis of such  
3 records is not the only way to address how well the  
4 system is or is not performing, is it?

5 A. That's correct.

6 Q. Turning to page 20 of your testimony at  
7 lines 9 through 12, you recommend a minimum data  
8 retention period of five years to correlate the level  
9 of reliability that results from specific planning,  
10 maintenance, or operating policies. Do you see that?

11 A. Yes, I do.

12 EXAMINER BOJKO: What page are you on?

13 MS. MILLER: I'm sorry, page 20, lines 9  
14 through 12.

15 Q. However, although the Staff Reports  
16 address the companies' maintenance policies, the  
17 Staff Reports do not address the companies' planning  
18 or operating policies, do they?

19 A. No, I don't agree with that.

20 EXAMINER BOJKO: Can I have that question  
21 reread, please?

22 (Record read.)

23 Q. You are not familiar with the companies'  
24 record-keeping systems as it pertains to planning or

1 operating policies, are you?

2 A. No.

3 Q. No, you are not?

4 A. I am not.

5 Q. On page 14 beginning at line 21 you state  
6 that "FirstEnergy's vegetation management program  
7 based on a 4-year tree trimming cycle is an area of  
8 serious concern." Do you see that?

9 A. Yes, I do.

10 Q. This comment is not a critique of  
11 FirstEnergy's four-year cycle, is it?

12 A. Not as it pertains to the length of the  
13 cycle, no.

14 Q. You are merely stating that tree trimming  
15 in general is an area of serious concern for any  
16 company, aren't you?

17 A. Any company with similar circuitry and  
18 trees, topography, I would agree with that, yes.

19 Q. Turning to page 21, at lines 15 through  
20 18, you state that the pay for contract workers is  
21 typically low and this results in high turnover  
22 making it difficult to have continuity of experience  
23 and consistently high quality of work product. Do  
24 you see that?



1 A. Yes, I do.

2 Q. However, you have not performed any study  
3 or investigation of tree trimming contractor pay  
4 levels or turnover in the FirstEnergy service  
5 territory, have you?

6 A. I have done basically like an internet  
7 search for Department of Labor type statistics, but  
8 to the degree that's a study, I'm not sure if that's  
9 what your meaning is.

10 Q. You did this for the FirstEnergy service  
11 territory?

12 A. The search that I did was the U.S.  
13 Department of Labor statistics, so I did two  
14 different searches, one specific for tree trimmers  
15 and pruners in the electrical distribution and  
16 transmission industry, and then one specifically for  
17 Ohio for the same -- for the same category of worker.

18 Q. And did you do this review before you  
19 wrote your testimony?

20 A. No, I did not.

21 Q. Same page at lines 21 and 22 you also say  
22 that it has been your experience that tree trimming  
23 contractors are the first to go. Do you see that?

24 A. Yes, I do.

1           Q.    You have not conducted any survey or  
2 study to confirm this statement, have you?

3           A.    I believe I say there it's been my  
4 experience.

5           Q.    So it's correct to say you have not done  
6 any survey or study?

7           A.    That would be correct.

8           Q.    Turning to page 22 at lines 4 through 6,  
9 you stated an opinion that frequently there is a  
10 direct link between a reduced and/or inefficient  
11 vegetation management program and an electric  
12 utility's declining performance. Do you see that?

13          A.    Yes, I do.

14          Q.    You have not performed any sort of  
15 statistical analysis to derive a direct link between  
16 a reduced or inefficient vegetation management  
17 program and an electric utility's declining  
18 performance, have you?

19          A.    I have done analysis in my past  
20 experience, I'm not sure you would characterize it as  
21 statistical, but I have analyzed Kentucky Power's,  
22 for example, outage experience as it related directly  
23 with trees or vegetation or indirectly related type  
24 of causes that relate back to vegetation and it was

1 my experience doing those studies and analyses that  
2 at least half or up to 60 percent, at least in  
3 Kentucky Power, outages were directly or indirectly  
4 related to vegetation management.

5 EXAMINER PRICE: Mr. Cleaver.

6 THE WITNESS: Yes.

7 EXAMINER PRICE: When you say 60 percent  
8 of the outages were related to the vegetation  
9 management, are you saying that 60 percent of the  
10 outages were related to a reduction in their  
11 vegetation management program or just 60 percent of  
12 the outages were related to vegetation, trees and  
13 that sort of thing?

14 THE WITNESS: Based on our analysis, and  
15 I was over the vegetation management program in  
16 Kentucky Power, and based on analyzing outage causes,  
17 classifications, and so forth, we linked anywhere  
18 between 50 and 60 percent of the causes either  
19 directly or indirectly to vegetation.

20 EXAMINER PRICE: Vegetation, but not to a  
21 reduction in their vegetation management program.

22 THE WITNESS: No, just the outage causes.

23 EXAMINER PRICE: Did they reduce their  
24 vegetation management program while you were employed

1 there?

2 THE WITNESS: Yes, they did.

3 EXAMINER PRICE: Thank you.

4 Q. (By Ms. Miller) Turning to page 28 of  
5 your --

6 MR. REESE: Excuse me. Can I get that  
7 cite again?

8 MS. MILLER: Yeah, turning to page 28 of  
9 your testimony.

10 MR. REESE: Thank you.

11 Q. In lines 15 through 18 you state the  
12 company's leading outage causes in recent years, as  
13 noted in the Staff Reports, are equipment failure,  
14 line failures, distribution substation causes which  
15 include breakers and transformers, trees in the  
16 right-of-way, and then trees outside of the  
17 right-of-way, and animals. Do you see that?

18 A. Yes, I do.

19 Q. Isn't it correct that the Staff Reports  
20 never referenced trees in the right-of-way?

21 A. To be honest, I can't remember exactly  
22 whether it was in the Staff Report or the UMS report  
23 in that regard.

24 Q. In a number of places throughout your

1 testimony you used the terms "less reliable,"  
2 "declining performance," "reduced reliability,"  
3 "decline in service reliability," and "trend toward  
4 declining reliability." In fact, for all of those  
5 references is it correct to say that what you are  
6 saying is that CEI and OE missed their respective  
7 targets?

8 A. That's the essence.

9 Q. On page 3 at lines 2 and 3 of your  
10 testimony --

11 A. Lines again, please? Page 3?

12 Q. Lines 2 and 3. When you state that  
13 performance has become less reliable in recent years,  
14 you are not referring to Toledo Edison, are you?

15 A. That's correct.

16 Q. And remaining on page 3 at line 3, when  
17 you use the words "recent years," you're referring to  
18 the years 2000 through 2006; is that correct?

19 A. Yes.

20 Q. In your opinion the companies'  
21 reliability performance is based on the charts set  
22 forth in the Staff Report; is that correct?

23 A. As it relates to the reliability targets?

24 Q. Yes.

1 A. Yes.

2 Q. And reliability can be affected by  
3 factors outside the companies' control such as  
4 weather; isn't that correct?

5 A. That's true.

6 Q. And you have not done any independent  
7 analysis of electric service outage experience of the  
8 companies' distribution systems, have you?

9 A. I don't have that information available,  
10 no.

11 Q. Have you done it?

12 A. No.

13 Q. On page 3 of your testimony you provide a  
14 footnote that indicates that the companies are  
15 required to provide staff an annual report of their  
16 systemwide performance against a set of reliability  
17 targets. Do you see that?

18 A. Footnote 1, yes.

19 Q. But you did not see or review this annual  
20 report to evaluate for yourself how the companies'  
21 systemwide performance was affecting reliability, did  
22 you?

23 A. No, I have not.

24 Q. Nor did you have any discussions with the

1 PUCO staff pertaining to the information in its  
2 annual report, did you?

3 A. No.

4 Q. Do you believe it is more productive for  
5 a commission to focus on and make specific  
6 recommendations to a company to improve their  
7 reliability instead of reducing their rate of return?

8 A. That would depend on the situation.

9 Q. Do you have an opinion on whether a  
10 commission should reduce a company's rate of return  
11 based on a company's reliability?

12 A. No, I do not.

13 MS. MILLER: No further questions.

14 EXAMINER BOJKO: Staff?

15 MR. WRIGHT: Yeah, I think just a couple  
16 here.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Wright:

20 Q. Good afternoon, Mr. Cleaver.

21 A. Good afternoon.

22 Q. Could you explain your familiarity with  
23 the UMS report that you referenced in your testimony.

24 A. I've read the report, the entire report.

1 I correlated the recommendations that are contained  
2 in the CEI Staff Report with this report. Primarily  
3 I think most of them are found in the executive  
4 summary and then the rationale, I guess, and the  
5 details behind what UMS did to make those  
6 recommendations were detailed in the back of those  
7 reports. So I did read all those and did my best to  
8 understand and correlate staff's recommendations with  
9 the recommendations and background assumptions and so  
10 forth that's in that report.

11 Q. Is it fair to say that you're supportive  
12 of the report prepared by UMS?

13 A. With the exceptions that I cite in my  
14 testimony, yes.

15 Q. Now, you just indicated, did you not,  
16 that there is a rationale in part of the report for  
17 the recommendations that are made in that report?

18 A. Could you say that again, please?

19 Q. I believe you just testified, did you  
20 not, that in the back of the UMS report there is a  
21 rationale provided, the reasoning and rationale for  
22 the recommendations in that report.

23 A. To the best of my recollection every  
24 section was concluded with some kind of



1 recommendation and typically there was at least  
2 somewhat of a rationale, it may be sometimes they  
3 would say that CEI's already doing this and we would  
4 recommend they continue doing this, so to that  
5 extent, rationale was -- it may vary all over the  
6 ballpark about how much detail or how much actual --  
7 well, detail was actually put into that rationale.  
8 But, yes, you're right, it was at least somewhat to  
9 some degree supported by some rationale.

10 EXAMINER BOJKO: In the UMS report; is  
11 that the report? Not the Staff Report, you're  
12 talking about the UMS report?

13 THE WITNESS: That's the way I understood  
14 it.

15 MR. WRIGHT: The question went to the UMS  
16 report.

17 THE WITNESS: Yes.

18 Q. Now, you indicated I believe also that  
19 you had reviewed the Staff Report of Investigation  
20 for CEI in this case?

21 A. Yes.

22 Q. As it related to the UMS recommendations?

23 A. As it related to reliability, right,  
24 service monitoring section.

1 Q. Do you disagree with any of these  
2 recommendations?

3 A. Yes.

4 Q. Okay. Is it your understanding that --  
5 well, strike that.

6 On page 12 of your testimony at line 18  
7 you indicate that neither the staff nor UMS has  
8 provided any justification for the recommendations  
9 and any associated expenditures; is that correct?

10 A. As it relates to expenditures, yes.

11 Q. Your testimony, your prefiled testimony,  
12 does not offer any independent analysis about any of  
13 these recommendations, does it?

14 A. No, it does not.

15 Q. Nor does it offer any -- despite the fact  
16 that you're critical, nor does it offer any guidance  
17 as to anything with regard to the cost of  
18 implementing any of these recommendations, does it?

19 A. Again, when UMS has cited and the staff  
20 has recommended specific budget amounts and continued  
21 expenditures as they relate to reliability-related  
22 projects, then I have taken exceptions to those two  
23 recommendations.

24 Q. My question was your prefiled testimony

1 that has been marked as OCC Exhibit 4 does not  
2 contain any analysis about any specific expenditure,  
3 does it, as it would relate to implementation of the  
4 UMS recommendations?

5 A. That's correct.

6 MR. WRIGHT: That's all the questions I  
7 have. Thank you.

8 EXAMINER BOJKO: Redirect?

9 MR. REESE: Just a moment.

10 Your Honor, could we have five minutes,  
11 please?

12 EXAMINER BOJKO: Five minutes.

13 MR. REESE: Thank you.

14 EXAMINER BOJKO: Let's go off the record.  
15 (Recess taken.)

16 EXAMINER BOJKO: Let's go back on the  
17 record.

18 Mr. Reese, do you have redirect?

19 MR. REESE: Yes, your Honor.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Reese:

23 Q. Mr. Cleaver, could you go to page 28 of  
24 your testimony, please. I believe you were asked

1 some questions on cross regarding the Staff Report's  
2 reference to trees in the right-of-way; is that  
3 correct?

4 A. My understanding that the question was  
5 related to trees outside the right-of-way, so I  
6 responded in that manner.

7 Q. I believe the question posed to you was  
8 whether the Staff Report dealt with trees in the  
9 right-of-way.

10 A. That's correct. The Staff Reports  
11 contain many references to vegetation management.

12 Q. Inside the right-of-way?

13 A. Yes.

14 Q. Okay. You were also asked a question  
15 about a recommendation regarding the rate of return  
16 in the rate case. Did you make a recommendation  
17 relative to the downward adjustment in rate of  
18 return?

19 A. Yes, I did.

20 Q. Can you tell me where that recommendation  
21 is located?

22 A. I believe it's on page 30.

23 Q. Okay.

24 A. Recommendation 3.

1 Q. Can you read that for me?

2 A. "Due to the declining performance of  
3 FirstEnergy, and particularly that of CEI, in meeting  
4 reliability targets for the service to its customers,  
5 OCC recommends that the Commission reflect the  
6 Company's underperformance in the allowed Rate of  
7 Return in this distribution rate case."

8 Q. Thank you. I believe also in your cross  
9 you were asked some questions about the contractors,  
10 the use of contractors in vegetation management, tree  
11 trimming crews; is that correct?

12 A. Yes.

13 Q. You also mentioned a labor department  
14 study you had researched on the internet; is that  
15 correct?

16 A. That's correct.

17 Q. The research that you did on the  
18 Department of Labor statistics, did that support your  
19 recommendations and findings regarding vegetation  
20 management?

21 A. It reinforced my conclusion.

22 MR. REESE: No further questions.

23 EXAMINER BOJKO: Any party have any  
24 recross based on that? Company?

1 MS. MILLER: No, your Honor.

2 EXAMINER BOJKO: Staff?

3 MR. WRIGHT: No questions.

4 EXAMINER BOJKO: I have a few questions,  
5 Mr. Cleaver.

6 - - -

7 EXAMINATION

8 By Examiner Bojko:

9 Q. Could you turn to page 12 of your  
10 testimony, line 10, the end of line 10 you begin  
11 "Further."

12 A. Which line, please?

13 Q. 10, the new sentence beginning at the end  
14 of line 10.

15 A. Yes.

16 Q. "Further, a determination needs to be  
17 made as to what activities fall within the realm of  
18 routine maintenance." Do you see that?

19 A. Yes.

20 Q. Have you done this analysis, or have you  
21 made any of these determinations?

22 A. Based on my experience that was my  
23 recommendation, but in this case if that's your  
24 question, no.

1           Q.    I meant specifically for this case, have  
2   you looked at FirstEnergy's or CEI's, specifically I  
3   guess, system and determined what activities fall  
4   within the routine maintenance that they should  
5   regularly be doing?

6           A.    Routine maintenance and my understanding  
7   of how that -- what kind of work would be classified  
8   as routine maintenance would include their vegetation  
9   management program so that's primarily what I had in  
10  mind when I wrote that.

11          Q.    So I guess what I'm asking is do you  
12  think that all the items concerning vegetation  
13  management that have been at issue in this case, I  
14  guess, including the UMS report as well as testimony,  
15  I believe -- were you here yesterday for  
16  Miss Lettrich's testimony?

17          A.    Yes.

18          Q.    Items she suggested in there, are you  
19  contending that you think all of those maintenance  
20  items should already be included in CEI's regular  
21  maintenance budget and that they would not require  
22  additional funding?

23          A.    I think some would and some may not, not  
24  being that familiar with their systems. Based on my

1 experience, for example, clearing a healthy overhang  
2 that hangs out into the right-of-way, into that  
3 corridor, that may originate from a tree that is  
4 located outside that boundary, our policy at Kentucky  
5 Power was that was in our airspace and we would, in  
6 fact, clear that and we would not consider that  
7 enhanced type of vegetation.

8 So anything -- we'd strike a vertical  
9 line, anything in that line, I mean our lines are up  
10 in the air so it's what's up in the air is important,  
11 so we could clear that, so that would be a policy  
12 difference and to me that would not entail additional  
13 expenditures.

14 Q. Have you looked specifically at CEI's  
15 system to make these kind of specific determinations?

16 A. Have I looked specifically at their  
17 right-of-way?

18 Q. Well, no, their policies and practices to  
19 determine whether the items that Miss Lettrich says  
20 were an expansion of their policy and practice or  
21 went beyond their policy and practice and thus would  
22 be -- I think she used the word "enhanced vegetation  
23 management" and would require additional funding, did  
24 you look at those items and ascertain whether you



1 believe they should be included in the regular  
2 maintenance that's already in the budget or kind of  
3 outside of that and enhanced or additional funding  
4 required?

5 A. I'm not sure what's in their budget to be  
6 honest with you. Based on my experience the type of  
7 item I've just mentioned would be you can do it while  
8 you are there so there's no additional trips or labor  
9 or special equipment or anything like that that would  
10 be involved. If you go beyond that, then there might  
11 be other costs involved.

12 Q. Are there other examples beyond the one,  
13 the healthy tree overhang that you just mentioned,  
14 are there other examples in Miss Lettrich's testimony  
15 yesterday that you can tell whether you believe it  
16 would have been -- should be at least from your  
17 experience inside CEI's budget or outside CEI's  
18 existing maintenance budget?

19 A. No.

20 Q. On page 14 there are a couple of  
21 questions from Ms. Miller that I'm not sure I heard  
22 you correctly or I'm not sure I understand your  
23 response. I thought Ms. Miller asked you with regard  
24 to question and answer A13 of whether your

1 recommendations in 1 and 2 were based solely on the  
2 Staff Report, but I see in the first sentence of your  
3 answer to A13, I thought you responded yes to that  
4 question that was solely on the Staff Report, but I  
5 see a reference to both the Staff Report and the UMS  
6 report.

7           Could you clarify what -- were you  
8 talking about just the Staff Report for your  
9 recommendations or did you look at both?

10           A. I looked at both.

11           Q. So your findings, is what you call them,  
12 1, 2, and 3 on pages 14 and 15, were based on your  
13 review of the Staff Reports plural, I guess, for all  
14 companies, as well as the UMS reports.

15           A. That's correct.

16           EXAMINER PRICE: Did I understand you  
17 correctly that you did not look at any of the Rule 10  
18 reports in preparing this testimony?

19           THE WITNESS: I don't think I have that  
20 right, and if I do, no, I did not.

21           Q. Have that right. Are you saying that  
22 those reports aren't filed so you don't have -- OCC  
23 doesn't have them? Is that what you mean by "have  
24 that right"?

1           A.    It would be my understanding that unless  
2           that was a part of a case, that that would not be an  
3           open or a public document that OCC or any other  
4           intervenor would be involved with. That's between --  
5           to my understanding it's between the company and the  
6           staff.

7           Q.    Do you know if you requested that report  
8           in your review of this case?

9           A.    No, we did not.

10           EXAMINER PRICE: Do you know if the staff  
11           has ever indicated that those findings are not public  
12           reports?

13           THE WITNESS: I haven't asked that in  
14           discovery, no. I wouldn't know the answer to that.

15           EXAMINER PRICE: So really you can't say  
16           they were made available, you just didn't ask for the  
17           reports.

18           THE WITNESS: I didn't even know they  
19           existed until the Staff Reports came out. I'm sorry,  
20           the Rule 10 I did. UMS I didn't know existed.

21           EXAMINER PRICE: I'm asking about the  
22           Rule 10 reports.

23           THE WITNESS: Okay. Yes.

24           Q.    (By Examiner Bojko) Specifically the

1 finding 2 on that same page, page 14 --

2 A. Yes.

3 Q. -- Miss Miller I believe asked you if you  
4 had serious concern, if this was a general serious  
5 concern of all utilities, and I thought you said yes,  
6 but I guess I'm asking you do you specifically have a  
7 concern with FirstEnergy's vegetation management  
8 program?

9 A. I see the same links that are common that  
10 I've seen in other utilities with the FirstEnergy  
11 case, yes.

12 Q. So you see the same links. Do you have  
13 knowledge of FirstEnergy's vegetation management  
14 program, specific knowledge that raises specific  
15 concerns?

16 A. No, I draw those correlations based on  
17 their outage categories and the frequency of those  
18 categories, that includes trees inside and outside  
19 the right-of-way, that includes animals which are --  
20 you know, they live in the trees so they're related,  
21 lightning is related, wind is related. So their  
22 outage categories are very similar to the ones that  
23 I've seen for 25 years throughout my experience, so  
24 it's my opinion that the same things that are

1 happening on FirstEnergy's systems have been  
2 happening on similar systems for decades.

3 EXAMINER PRICE: Well, wouldn't all  
4 electric utilities outage categories be roughly the  
5 same? Aren't they all going to be vegetation,  
6 animal, equipment? I mean, is there some other  
7 category that I'm not thinking of that should be  
8 cropping up?

9 THE WITNESS: And that's because the same  
10 things have been causing outages, you know, for  
11 years.

12 EXAMINER PRICE: Isn't it because there  
13 are overhead lines?

14 THE WITNESS: That's a big part of it,  
15 yes, they're out there sharing space with trees and  
16 trees have been growing.

17 EXAMINER PRICE: And squirrels.

18 THE WITNESS: Yes, and they're battling  
19 airspace and they're still doing it.

20 EXAMINER PRICE: Lightning strikes.

21 THE WITNESS: Yes.

22 Q. (By Examiner Bojko) Specifically then can  
23 you read your finding 2 because I don't think you  
24 answered my question.

1           A.    Okay, I'm sorry.

2           Q.    I'm just confused. I mean, do you  
3 have -- have you reviewed the Staff Report and the  
4 UMS report specifically to FirstEnergy, the three  
5 companies, and determined, made a finding, that  
6 there's a concern with FirstEnergy's vegetation  
7 management program? Or are you just saying every  
8 utility's vegetation management program has concerns?

9           A.    I think every utility that has similar,  
10 again, like circuitry and topography and a lot of  
11 trees in the right-of-way as was just stated, that  
12 they have similar concerns and I see similarities and  
13 correlations the same with those companies as the  
14 FirstEnergy case.

15          Q.    So you do see concern with FirstEnergy in  
16 this specific case, then.

17          A.    I see the same patterns that I've seen in  
18 my experience over the last couple decades, yes.

19          Q.    Okay.

20               EXAMINER PRICE: In your finding 3 you  
21 indicate a trend of reduced reliability. Did you  
22 control weather as a variable at all? I mean, we all  
23 think -- today we're thinking severe weather is on  
24 our minds, but we all hear climate change, changes in

1 climate more as severe weather. Did you in looking  
2 to reduce, what you call reduce reliability, did you  
3 control for weather as a variable?

4 THE WITNESS: I did not do what I might  
5 call a normalization. Would that be something  
6 similar to what you're talking about?

7 EXAMINER PRICE: Yes.

8 THE WITNESS: I don't think normalization  
9 has been applied to any of the graphs that I saw in  
10 the Staff Report.

11 EXAMINER PRICE: I'm asking you.

12 THE WITNESS: No, I have not done -- I  
13 didn't have the weather data or anything like that to  
14 do that. It could be, it could be, but I don't think  
15 I have done it nor has anyone to my knowledge done  
16 that.

17 Q. (By Examiner Bojko) On the last sentence  
18 of that same finding on page 15 --

19 A. 15?

20 Q. That last sentence, it's in the same  
21 No. 2 finding but it goes over to page 15.

22 A. Okay.

23 Q. See the last sentence, it starts "Also,  
24 FirstEnergy does not currently have"?

1 A. Yes.

2 Q. Okay. "Also, FirstEnergy does not  
3 currently have a specific program to deal with trees  
4 outside the right-of-way as part of the vegetation  
5 management effort." Kind of what we were talking  
6 about before. Does this even include those trees  
7 that encroach on the lines in the right-of-way of  
8 what you were just explaining to me, that they're in  
9 their airspace? Are you saying they don't have any  
10 specific program to deal with those trees because the  
11 base may physically be located outside their  
12 right-of-way?

13 A. That would be my understanding, and based  
14 on the UMS, their comments on the same issue, I  
15 looked at that and based on what I heard from  
16 Miss Lettrich and based on what I read in UMS, that's  
17 the conclusion I drew, that it would include healthy  
18 overhang, and the best of my understanding of those  
19 two sources, the UMS and the Staff Reports and  
20 Miss Lettrich, that there was no aggressive program  
21 to go outside the right-of-ways either to obtain  
22 right-of-way or to cut or trim trees that were  
23 outside their current easements.

24 Q. Even though the overhang was in the



1 right-of-way.

2 A. That's my understanding.

3 Q. Okay. Just housekeeping because we've  
4 asked everybody else on the stand, somebody has. On  
5 the bottom of page 15 you reference the  
6 Administrative Code and you quote it and give an  
7 opinion about it. You're not an attorney, and you're  
8 not giving a legal opinion on that.

9 A. No.

10 EXAMINER PRICE: I have another question  
11 on finding 3.

12 THE WITNESS: Page?

13 EXAMINER PRICE: Page 15, finding 3.

14 THE WITNESS: Okay.

15 EXAMINER PRICE: You did not indicate  
16 that CEI and OE have missed their SAIDI targets, you  
17 indicate they've missed SAIDI and CAIDI, correct?

18 THE WITNESS: That's correct.

19 EXAMINER PRICE: So am I correct they  
20 have been hitting their SAIFI targets?

21 THE WITNESS: I wouldn't know. I don't  
22 believe it was in the Staff Report so I would not  
23 know that. You're talking about S-A-I-D-I?

24 EXAMINER PRICE: Yes.

1 THE WITNESS: SAIFI and CAIDI were the  
2 two that I recall. We can look them up, I have them  
3 here, but I think it's those two that have been  
4 referenced in the Staff Report and that I have  
5 referenced in my --

6 EXAMINER PRICE: So you don't know if  
7 they are hitting their SAIDI targets at all.

8 THE WITNESS: No, I do not.

9 EXAMINER PRICE: I'm correct that SAIDI  
10 is actually the product of multiplying SAIFI times  
11 CAIDI.

12 THE WITNESS: I think that's often left  
13 out because if you have the other two, just by the  
14 calculation you can get the third.

15 Q. (By Examiner Bojko) On page 18, your  
16 sentence on 6 to 8 -- well, it starts on 4, you talk  
17 about the maintenance and the record retention policy  
18 and that three years is too short because it  
19 typically takes time to implement some of the  
20 maintenance performed. Do you see that?

21 A. Yes.

22 Q. I was paraphrasing, I wasn't reading.

23 A. That's all right. I know where you're  
24 at.

1           Q.    And you said you were here for  
2 Miss Lettrich's testimony. Did you hear her say that  
3 if there was a problem, they record that problem  
4 outside of the normal maintenance records?

5           A.    Were we talking about tree trimming or is  
6 this circuit maintenance? Do you recall?

7           Q.    I believe it was with circuit  
8 maintenance.

9           A.    I don't recall that, no.

10          Q.    Let's assume that if there is a -- I  
11 think it was because I was asking why you wouldn't  
12 keep multiple cycles in case there was a habitual,  
13 maybe you remember the word "habitual" used, that if  
14 there was a habitual problem, wouldn't it be helpful  
15 to have two cycles worth, and she stated that if they  
16 have a problem, they record it in a different place  
17 so they would have a record of it.

18                Let's assume that to be the case. Is  
19 that sufficient, in your opinion, of keeping those  
20 records, the problem ones, in another area in a  
21 separate report or database?

22          A.    That's not what I would recommend. As an  
23 engineer, I think you want as many good records as  
24 you can. When I worked at AEP, you would have had to

1 make me throw away records, we typically kept records  
2 for several years and, you know, I think that was our  
3 policy. You keep them even after that unless someone  
4 made us -- because we ran out of room.

5           Records are a tool, they're a reflection  
6 of history. As a matter of fact, with AEP through  
7 the use of records that went back several years we  
8 were able to discover a problem that we had with  
9 insulators that typically aren't a frequent outage  
10 cause, fairly infrequent when you have a broken  
11 insulator that causes a problem, but we were able to  
12 go back several years and identify it was not only  
13 insulators but it was a particular manufacturer, and  
14 when we passed that information on to AEP Service  
15 Corporation, they checked the other operating  
16 companies and we were able to ascertain that we had  
17 basically a manufacturer's defect.

18           So it's very valuable information and it  
19 does show trends, it shows the physical condition of  
20 your infrastructure that can be used by engineers to  
21 evaluate problems, to evaluate programs, to evaluate  
22 changes in policies like changing your tree trimming  
23 cycle from three years to five, because it takes time  
24 to do that. If you're trimming your trees every

1 three years and it's a three-year cycle. If you'll  
2 be trimming that circuit every five years, it's a  
3 five-year cycle. When you change that, you have to  
4 have overlapping data so I really think records are,  
5 you know, very important really for the company's use  
6 as much as the staff's to verify their compliance.

7 Q. And would -- in your experience, would  
8 you think that it's likely that utilities or at least  
9 the utilities in your experience have had -- I think  
10 Miss Lettrich said there were hundreds of forms or  
11 copies of paper per each circuit maintained. Would  
12 that be true in your experience in other utilities?

13 A. I think she was talking about a  
14 particular example and she was talking about maybe  
15 having to go back and reconstruct tree trimming start  
16 and stop dates through time sheets, and time sheets  
17 at least when I was in Kentucky Power, they were  
18 paper, most places don't have -- they have electronic  
19 time keeping systems now so it wouldn't be as much of  
20 a problem I think as far as storage and ease to get  
21 that information, but if you went back several years,  
22 you might have a problem like that.

23 But I think we're just talking about  
24 storage space, records storage if it's paper, and

1 typically I mean if it's retention, we're just  
2 talking about you're already doing it, whatever the  
3 records we're talking about, you're already keeping  
4 those records so just keep them longer.

5 So in my opinion the more of those  
6 records you can keep, the better for people when they  
7 want to evaluate changes in your reliability programs  
8 or capital programs or anything that might relate to  
9 reliability, those records help you evaluate more  
10 precisely the effect of those programs.

11 Q. Okay. I'm speaking of record retention,  
12 on page 20 you mention a specific minimum date or  
13 minimum period of five years.

14 A. Yes.

15 Q. Where did you get that number? Did you  
16 just pull five years out of the air or is there some  
17 scientific study?

18 A. I think it's kind of a rule of thumb. I  
19 think an example, my longest example when I was  
20 talking about, you know, a capital project that might  
21 take time to plan and a couple years to actually  
22 implement and then a couple years of data actually to  
23 evaluate, you know, that program to see if you've got  
24 the desired result, that would be four or five years.

1 In FirstEnergy's case they have a four-year tree  
2 trimming cycle. If they have a carryover where they  
3 were refused entrance to trim the trees or if they  
4 got into the 55th month or, you know, something like  
5 that, it would cover most of those instances.

6 So I felt five years was a pretty good  
7 number to shoot for in regard to those two  
8 situations.

9 Q. On page 21, I might know the answer to  
10 this question, on line 21 you talk about -- you make  
11 a reference to "it has been my experience," and I  
12 think it's just you were referencing -- I wondered if  
13 you had any specific experience in mind but I think  
14 it's just your past utility experience in working  
15 with the vegetation management programs. Is that  
16 what you were referencing?

17 A. I have a experience, I mean a direct  
18 experience when I worked at Kentucky Power that was  
19 exactly this situation.

20 Q. Okay. On page 25 you talk about the  
21 situation we talked earlier on lines 17 and 19 about  
22 the vegetation management program caused by trees  
23 outside of the distribution right-of-way and you  
24 recommend that FirstEnergy implement a program to

1 deal with this issue. Are you just saying what you  
2 said before, that you want to -- you think that if  
3 the overhang comes into the right-of-way, that they  
4 should deal with that, or do you have a more specific  
5 program in mind?

6 A. I had a little bit more in mind than just  
7 that. When we had a situation where our line  
8 inspectors felt like a tree did pose a danger for our  
9 distribution lines, even if that tree was outside the  
10 right-of-way, and it might be based on the health of  
11 the tree, it might be based on the height or the  
12 species, it could have large limbs that were subject  
13 to breaking off, that we aggressively went after  
14 permission to cut that tree down or to trim it and we  
15 would go to the extent of even offering to replace  
16 that tree if the landowner would allow us to cut it  
17 down.

18 Q. But I guess are you still saying even  
19 though the tree, the base of it might be out of the  
20 right-of-way, the reason for needing this would be  
21 because it would fall -- it would be creating a  
22 danger into the right-of-way, into FirstEnergy's  
23 lines or into --

24 A. That's right, a limb could fall off or an



1 ice storm could come along and cause it to break or a  
2 lightning bolt would hit it and knock it into the  
3 distribution line and would cause a, you know,  
4 extended outage.

5 EXAMINER PRICE: Do you know an electric  
6 distribution utility in this country where trees  
7 outside of the right-of-way are not one of the six  
8 leading causes of outages?

9 THE WITNESS: I can't say that I know  
10 that it is or it is not. I've not done a survey, but  
11 I do know of other utilities, you know, I've done  
12 some research in this regard and basically the  
13 majority of the parameters that we're talking about  
14 here today seem to apply just about everywhere.

15 Q. But I think you stated in response to one  
16 of Mr. Price's questions that even the utility that  
17 you were working for had to make budget cuts to  
18 vegetation programs; is that right?

19 A. That's correct.

20 Q. I mean, in a perfect world if there was  
21 unlimited funds we could try to maintain vegetation  
22 perfectly, as much as we can given nature. I mean,  
23 you're not suggesting that the company throws  
24 unlimited funds at this problem that's then paid for

1 by ratepayers.

2           A. In response to that I'd say based on my  
3 experience tree trimming has been given less  
4 attention, less regard as compared to other types of  
5 expenditures. Typically it's low-tech, low pay,  
6 non-company employees that aren't seen as part of the  
7 team. But at the same time to me it's such a crucial  
8 activity of maintaining service to your customers and  
9 for the reasons I just stated, low-tech, low pay,  
10 non-company people, it's given light regard,  
11 especially at the corporate level.

12           There's very few folks like, for example,  
13 at AEPSC that know anything at all about the  
14 operating company problems, what is going on, they  
15 just see it as a contract and a budget expenditure  
16 and they haven't spent, you know, sleepless nights  
17 trying to put power back on where trees have brought  
18 the lines down.

19           So I think they're too far removed  
20 sometimes and because of some of the issues I just  
21 brought up or some of the factors I think it's too  
22 lightly regarded and it's not looked at as one of  
23 the, well, the big dollar items like you said, it's  
24 not a million dollar power plant, well, a billion

1 dollar power plant, a million dollar a mile, 765 kV  
2 line or even a major distribution substation that  
3 even costs a million dollars a pop.

4 Q. So was that Kentucky Power where the  
5 vegetation program was --

6 A. Was cut, yes.

7 Q. And so did you -- what position at that  
8 time were you?

9 A. I was over the vegetation management  
10 program.

11 Q. So did you oppose that cut?

12 A. Absolutely. And that's why we did our  
13 study, to try to get it back.

14 Q. Are your concerns in your testimony more  
15 for CEI specifically because of the UMS report  
16 regarding their CAIDI and SAIDI failed targets, or  
17 are you talking about FirstEnergy as a whole, all  
18 three operating companies when you make your  
19 recommendations?

20 A. Well, it's hard to separate FirstEnergy  
21 totally I guess from this situation. Toledo Edison,  
22 for example, if all we were talking about was  
23 records, you know, we wouldn't be having this  
24 conversation. I mean, they've had a, you know, a

1 very good reliability performance history.

2 OE to the west to a lesser extent has had  
3 problems. Primarily the problems seem to be in  
4 Cleveland Electric Illuminating.

5 As to FirstEnergy as a whole, I'm not  
6 totally familiar with the chain of command and who  
7 makes what decisions, especially budgetary decisions  
8 and things like that, who's actually in charge of the  
9 tree trimming work. I think they have a forestry  
10 manager at the corporate level that's over that. But  
11 other than that, I don't know where you would  
12 actually separate the responsibility for CEI's  
13 performance from FE. There has got to be some link  
14 to the total company, but the problems are mainly in  
15 Cleveland, there's no doubt about that.

16 Q. On page 30 your last recommendation  
17 is that you're recommending the Commission  
18 investigate. And you recommend that this occur under  
19 the complaint statute. Under that statute, OCC has  
20 the authority as well to bring a complaint before the  
21 Commission; is that right?

22 A. I do not know that, no.

23 Q. But you know that the Commission has the  
24 authority under that statute?

1 A. That's my understanding, yes.

2 Q. Do you know whether OCC has or intends to  
3 file a complaint with regard to this finding?

4 A. I do not.

5 EXAMINER PRICE: If you could just  
6 briefly, I have one more question.

7 THE WITNESS: All right.

8 EXAMINER PRICE: At least. Turn to page  
9 30 in the UMS report that's attached to your  
10 testimony.

11 THE WITNESS: Yes.

12 EXAMINER PRICE: Were you here -- I think  
13 you said you were here for Miss Lettrich's testimony.

14 THE WITNESS: Yes, that's correct.

15 EXAMINER PRICE: Do you agree with her  
16 assessment that for improvement recommendation SI-1  
17 that tier 2 would not be cost-effective?

18 THE WITNESS: My recollection of what UMS  
19 said about the tier 2 was that they were less  
20 cost-effective, the cost benefit was less based on --  
21 subject to check that was my recollection, so they  
22 weren't recommending that all those --

23 EXAMINER PRICE: I'm asking you.

24 THE WITNESS: Okay. My understanding was

1 they were not as cost-effective as the tier 1s.

2 EXAMINER PRICE: Again I'm asking you do  
3 you believe, do you agree with her that it is not  
4 cost-effective, the tier 2s would not be  
5 cost-effective?

6 THE WITNESS: I would have to analyze  
7 that and I would have to have more information before  
8 I could honestly answer that question.

9 EXAMINER PRICE: Is it the same answer  
10 with respect to recommendation SI-2 with respect to  
11 the tier 2?

12 THE WITNESS: I'm sorry, could you give  
13 me a --

14 EXAMINER PRICE: Page 30 attached to your  
15 testimony. Page 30 in the UMS report.

16 THE WITNESS: I'm on page 30 in my  
17 testimony.

18 EXAMINER PRICE: No.

19 THE WITNESS: So that's where we messed  
20 up. UMS.

21 EXAMINER PRICE: Yesterday she stated her  
22 belief that the recommendation SI-2 tier 2 would not  
23 be cost-effective. Do you agree with her assessment  
24 that that recommendation would not be cost-effective?

1 It's the second recommendation, SI-2.

2 THE WITNESS: Lightning protection?

3 EXAMINER PRICE: Yes.

4 THE WITNESS: You want my opinion.

5 EXAMINER PRICE: I want your opinion.

6 THE WITNESS: Okay. I don't think I  
7 could honestly tell -- this looks like a cost that is  
8 a cost, a budgetary-type cost that they're giving her  
9 in their incremental cost column of looks like  
10 \$225 per customer interruption avoided, you'd have to  
11 have a cost benefit analysis of other alternatives  
12 before you can really say that's cost-effective or  
13 not in my opinion.

14 EXAMINER PRICE: So you don't have an  
15 opinion at this time.

16 THE WITNESS: Not for that particular --  
17 as a matter of fact, that's one of the --

18 EXAMINER PRICE: No. I'm done.

19 THE WITNESS: Is that enough?

20 EXAMINER PRICE: That's enough.

21 THE WITNESS: Okay, we'll stop there.

22 EXAMINER PRICE: Thank you.

23 EXAMINER BOJKO: OCC.

24 You may step down.

1 MR. REESE: I have one question, I'm  
2 sorry.

3 EXAMINER BOJKO: Is it a clarifying  
4 question based on the Bench's questions?

5 MR. REESE: Yes, your Honor.

6 EXAMINER BOJKO: Okay.

7 - - -

8 FURTHER REDIRECT EXAMINATION

9 By Mr. Reese:

10 Q. Mr. Cleaver, isn't the Rule 10 target  
11 reliability information for both SAIFI and CAIDI  
12 since the year 2000 available in the Staff Reports?

13 A. That's correct.

14 MR. REESE: Okay. Thank you.

15 EXAMINER BOJKO: You did review them or  
16 you didn't review them?

17 THE WITNESS: If I remember the Bench's  
18 question, I believe it was did I have personal  
19 knowledge or review of like the datas related to  
20 like, well, your question was about normalizing. I  
21 don't have that kind of information.

22 EXAMINER PRICE: I asked if you looked at  
23 the Rule 10 reports. Do the Rule 10 reports consist  
24 of more than just the SAIFI and CAIDI numbers?



1 THE WITNESS: The action plans?

2 EXAMINER PRICE: The Rule 10 reports in  
3 general. The reports required under Rule 10, do they  
4 produce more data than just the companywide SAIDI and  
5 CAIDI numbers -- SAIFI and CAIDI numbers?

6 THE WITNESS: Yes, they do, there are  
7 other indices besides those two, yes.

8 EXAMINER PRICE: Is there circuit level  
9 information provided in those Rule 10 reports?

10 THE WITNESS: I think that's Rule 11.

11 EXAMINER PRICE: Okay, you're right. Did  
12 you look at the Rule 11 reports?

13 THE WITNESS: No.

14 EXAMINER BOJKO: So did you review the  
15 Rule 10 reports?

16 THE WITNESS: As it relates to SAIFI and  
17 the CAIDI targets that are contained in the staff  
18 reports, absolutely.

19 EXAMINER BOJKO: Okay, thank you.

20 MS. MILLER: Can I have a clarifying  
21 question?

22 EXAMINER BOJKO: Very limited.

23

24

## RECROSS-EXAMINATION

By Ms. Miller:

Q. It's very limited, it's just to clarify that your review was what is set forth in the Staff Report when we talk about the ESS Rule 10, no other sort of review of this ESS Rule 10; is that correct?

A. That's the way I understood it.

MS. MILLER: Okay.

EXAMINER PRICE: Ms. Miller hit it right on the head.

EXAMINER BOJKO: So did you look at the companies' reports separately or did you just look at the results of the reports contained in the Staff Report?

THE WITNESS: I looked at the results in the Staff Report.

EXAMINER BOJKO: Ah. Okay. Thank you.

THE WITNESS: Sorry, your Honor.

EXAMINER BOJKO: That's okay.

EXAMINER PRICE: That's okay.

EXAMINER BOJKO: You may step down.

THE WITNESS: Thank you.

EXAMINER BOJKO: Mr. Reese, would you like to move the admission of your testimony?

1 MR. REESE: Yes, I think I will. Your  
2 Honor, at this time OCC moves for admission of  
3 Exhibit OCC 4.

4 EXAMINER BOJKO: And 4A?

5 MR. REESE: And 4A. Yes, your Honor.

6 EXAMINER BOJKO: Any opposition to the  
7 admission of OCC Exhibit 4 which is the Direct  
8 Testimony of Mr. Cleaver and a correction page  
9 identified as OCC Exhibit 4A?

10 MS. MILLER: No, your Honor.

11 EXAMINER BOJKO: Hearing none those will  
12 be admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER BOJKO: At this time we would  
15 like to go out of order of OCC's witnesses and take  
16 Mr. Garcia, a staff witness.

17 Mr. Wright, are you prepared to call  
18 Mr. Garcia at this time?

19 MR. WRIGHT: Mr. McNamee is. If I may  
20 before we do that, at this time, your Honor, would it  
21 be appropriate for us to go ahead -- we have  
22 distributed to the Bench and to the reporter copies  
23 of the Staff Reports for the respective companies.  
24 I'd like to go ahead and at this point mark those so

1 if there's a need for any of these witnesses to refer  
2 to them, they can do so.

3 What I've provided to the Bench and to  
4 the reporter, I've marked them in the following  
5 fashion: The CEI Staff Report will be Staff Exhibit  
6 1, The Ohio Edison report will be Staff Exhibit  
7 No. 2, and The Toledo Edison Staff Report will be  
8 Staff Exhibit No. 3.

9 EXAMINER BOJKO: Those will be so marked.

10 MR. WRIGHT: Thank you.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 MR. WRIGHT: And I have one other matter,  
13 if I may.

14 EXAMINER BOJKO: Please.

15 MR. WRIGHT: I would like to at this  
16 time, all parties having indicated no  
17 cross-examination for Staff Witness Ross Willis, I  
18 would like to go ahead and move his testimony into  
19 the record at this time. I would like to mark that  
20 as Staff Exhibit No. 4.

21 EXAMINER BOJKO: It will be so marked as  
22 Staff Exhibit No. 4.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. WRIGHT: And I would move its

1 admission as well.

2 EXAMINER BOJKO: Is anybody opposed to  
3 the admission of Staff Exhibit 4, Mr. Willis's  
4 testimony?

5 Hearing no opposition it will be  
6 admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. WRIGHT: Thank you, your Honor. With  
9 that we're ready to call Mr. Garcia.

10 MR. McNAMEE: Your Honor, at this time  
11 staff would call Carlos J. Garcia.

12 EXAMINER BOJKO: Mr. Garcia, could you  
13 please raise your right hand.

14 (Witness sworn.)

15 EXAMINER BOJKO: You may be seated.

16 - - -

17 CARLOS J. GARCIA

18 being first duly sworn, as prescribed by law, was  
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Mr. McNamee:

22 Q. Mr. Garcia, would you state and spell  
23 your name for the record, please.

24 A. My name is Carlos J. Garcia, and my

1 business address is 180 East Broad Street, Columbus,  
2 Ohio 43215-3793.

3 Q. By whom are you employed, sir?

4 A. I'm employed by the Public Utilities  
5 Commission of Ohio.

6 EXAMINER BOJKO: Excuse me. Could you  
7 put the microphone next to you? You might need to  
8 turn it on.

9 MR. McNAMEE: Your Honor, at this time I  
10 would ask to have two exhibits marked, the first  
11 being a document filed January 30 denominated  
12 Prefiled Testimony of Carlos J. Garcia, I'd like to  
13 have that marked as Staff Exhibit 5.

14 EXAMINER BOJKO: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. McNAMEE: And I would like to have  
17 marked as Staff Exhibit 5A a multipage document  
18 denominated Additional Attachments to Prefiled  
19 Testimony of Carlos J. Garcia filed February 11th.

20 EXAMINER BOJKO: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. McNAMEE: Thank you.

23 Q. (By Mr. McNamee) Mr. Garcia, do you have  
24 before you what's been marked for identification as

1 Staff Exhibits 5 and 5A?

2 A. Yes, I do.

3 Q. Could you tell me -- what's been marked  
4 for identification as Staff Exhibit 5, can you tell  
5 me what that is, please?

6 A. My prefiled testimony.

7 Q. Okay. And, Mr. Garcia, what's been  
8 marked for identification as Staff Exhibit 5A are  
9 attachments that would have been included in Staff  
10 Exhibit 5 if I had not mistakenly left them out;  
11 isn't that correct?

12 A. That's correct.

13 Q. Yes. Okay, Mr. Garcia, do you have any  
14 corrections, additions, deletions, updates for either  
15 Staff Exhibits 5 or 5A?

16 A. Yes, I do.

17 Q. What are those, please? Read them  
18 slowly.

19 A. I want to update and withdraw question  
20 and answer No. 11 because this objection has been  
21 withdrawn.

22 Q. That would be in your Staff Exhibit 5,  
23 the prefiled testimony?

24 A. Yes. That's on page 9.

1 And also I have two more corrections in  
2 page No. 3.

3 EXAMINER PRICE: One second, please.  
4 You're deleting the entire question and answer  
5 No. 11; is that correct?

6 THE WITNESS: That's correct.

7 Q. It runs over to page 10, correct?

8 A. Yes.

9 Q. And you had corrections?

10 A. Yes. I have two more, in page No. 3,  
11 line 16, after "exclusion of" to insert "generation  
12 revenues and." Line 21 --

13 EXAMINER BOJKO: Hold on one second. Can  
14 you say that last one again.

15 THE WITNESS: Yes. In line 16 after  
16 "exclusion of" to insert "generation revenues and."

17 Line 21 --

18 MR. NEILSEN: Your Honor, I'm still not  
19 clear on what the correction is and how it would read  
20 after the correction.

21 EXAMINER BOJKO: The end of that sentence  
22 would read "Electric Revenues be adjusted to reflect  
23 the exclusion of generation revenues and generation  
24 revenue associated with Energy for Education." Is



1 that right?

2 THE WITNESS: That's correct, yes.

3 MR. NEILSEN: Okay.

4 THE WITNESS: Also line 21, the same  
5 page, after "the" insert "staff."

6 EXAMINER BOJKO: "The staff will  
7 reflect"?

8 THE WITNESS: Yes.

9 Q. Is that all?

10 A. That's all.

11 Q. Okay. Mr. Garcia, were what's been  
12 marked for identification as Staff Exhibits 5 and 5A  
13 prepared by you or under your direction?

14 A. Yes.

15 Q. With the corrections and updates that  
16 you've noted are the contents of what's been marked  
17 for identification as Staff Exhibits 5 and 5A true to  
18 the best of your knowledge and belief?

19 A. Yes.

20 Q. Do you adopt those as your direct  
21 testimony in this case?

22 A. Yes.

23 MR. MCNAMEE: The witness is available  
24 for cross-examination.

1 EXAMINER PRICE: Let's go off the record.

2 (Discussion off the record.)

3 EXAMINER BOJKO: Back on the record.

4 IEU, do you have any questions for this witness?

5 MR. NEILSEN: No, your Honor.

6 EXAMINER BOJKO: Schools?

7 MR. BREITSCHWERDT: We do not, your  
8 Honor.

9 EXAMINER BOJKO: Mr. Rinebolt?

10 MR. RINEBOLT: No, your Honor.

11 EXAMINER BOJKO: OCC?

12 MR. SMALL: No, your Honor.

13 EXAMINER BOJKO: Company?

14 MR. FELD: No, your Honor.

15 MR. McNAMEE: That was easy.

16 EXAMINER BOJKO: I have a clarifying  
17 question. It will be brief, I promise. On page 2,  
18 your answer to question 6, I'm just unclear of  
19 whether you agree with the first part of applicant's  
20 objection. You say if the Commission accepts their  
21 objection, then there will be a flow-through effect,  
22 but do you agree or disagree with their objection  
23 about how staff incorrectly calculated the C-3  
24 adjustments?

1 THE WITNESS: What I'm saying is if the  
2 staff is going to accept the adjustments that we  
3 reflect in the Schedule B-5 as adjusted revenues and  
4 expenses, you know, I agree with those adjustments.

5 EXAMINER BOJKO: But you believe that  
6 staff's adjustments that were made are still correct.

7 THE WITNESS: Yes.

8 MR. McNAMEE: If the Bench has no further  
9 questions, I would move the admission of Staff  
10 Exhibits 5 and 5A.

11 EXAMINER BOJKO: The Bench is completed  
12 with its cross-examination, so is any party opposed  
13 to the admission of Staff Exhibits 5 or 5A?

14 Hearing none, we will admit Staff  
15 Exhibits 5 and 5A, Mr. Garcia's testimony and  
16 attachments.

17 MR. WRIGHT: Thank you, your Honor.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 EXAMINER BOJKO: Let's go off the record.

20 (Recess taken.)

21 EXAMINER PRICE: Let's go back on the  
22 record. OCC's next witness.

23 MR. SMALL: Thank you, your Honor. At  
24 this time the OCC calls Wilson Gonzalez to the stand,

1 and we'd like his prepared prefiled testimony marked  
2 as OCC Exhibit 3.

3 EXAMINER PRICE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 (Witness sworn.)

6 EXAMINER PRICE: Please be seated and  
7 state your name and business address for the record.

8 THE WITNESS: My name is Wilson Gonzalez,  
9 and my business address is 10 West Broad Street,  
10 Columbus, Ohio.

11 EXAMINER PRICE: Mr. Small.

12 - - -

13 WILSON GONZALEZ

14 being first duly sworn, as prescribed by law, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Small:

18 Q. Are you the Wilson Gonzalez whose  
19 prepared testimony was filed on January 10th, 2008,  
20 in these cases?

21 A. Yes.

22 Q. On whose behalf do you appear?

23 A. The Office of the Ohio Consumers'  
24 Counsel.

1 Q. Do you have your prepared testimony that  
2 we've marked as OCC Exhibit 3 with you on the stand?

3 A. Yes, I do.

4 Q. Did you prepare the testimony or have it  
5 prepared at your direction?

6 A. Yes, I prepared the testimony.

7 Q. Do you have any changes or corrections to  
8 your prepared testimony?

9 A. Yes, I do.

10 MR. SMALL: At this time, your Honor, OCC  
11 would like to have the correction sheet to  
12 Mr. Gonzalez's testimony marked as OCC Exhibit 3A.

13 EXAMINER PRICE: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER PRICE: I don't believe I have a  
16 copy of it. You probably gave it out, I apologize.

17 MR. SMALL: I have additional copies.

18 MR. RINEBOLT: I could use one as well,  
19 Jeff.

20 Q. Mr. Gonzalez, do you have what's been  
21 marked as OCC Exhibit 3A?

22 A. Yes, I do.

23 Q. Are those your changes and corrections?

24 A. Yes.

1 Q. What is the nature of the changes and  
2 corrections on that sheet?

3 A. The changes at page 3 amounts to  
4 clarification to information that's found elsewhere  
5 in my testimony. The second and third corrections  
6 recognize that the FirstEnergy companies do not have  
7 an existing DSM rider, although rider mechanisms for  
8 the recovery of demand-side management costs was  
9 previously approved by the Commission, and the  
10 remainder of the changes make small technical  
11 corrections.

12 Q. If I asked you today the same questions  
13 found in your prepared testimony as modified by your  
14 changes that are stated in the Exhibit 3A, OCC  
15 Exhibit 3A, would your answers be the same?

16 A. Yes.

17 MR. SMALL: OCC moves for admission of  
18 OCC Exhibits 3 and 3A and tenders the witness for  
19 cross-examination.

20 EXAMINER PRICE: Thank you. We'll defer  
21 ruling on the motion for admission until after  
22 cross-examination.

23 IEU?

24 MR. NEILSEN: Thank you, your Honor.

## CROSS-EXAMINATION

By Mr. Neilsen:

Q. Good afternoon, Mr. Gonzalez.

A. Good afternoon.

Q. My name is Dan Neilsen. I'm representing IEU-Ohio or Industrial Energy Users-Ohio. I have a few questions for you. First of all, with respect to some terminology in the testimony that we'll be using in our exchange today, you refer to DSM. I understand that to mean demand-side management; is that correct?

A. Yes, it means demand-side management, but I'm using it in a broad sense with respect to it incorporates or it's under the umbrella of energy efficiency, load management, AMI, distributed generation, so it's a very broad definition of demand-side management the way I use it.

Q. Thank you. I just want to make sure when you hear me refer to DSM, that we know what we're talking about.

Okay. Mr. Gonzalez, OCC is recommending that FirstEnergy increase spending on DSM to approximately 49 million dollars per year starting in 2009 on nonlow income energy efficiency programs and

1 to 5 million dollars per year for the low income  
2 Community Connections Program; is that correct?

3 A. The dollar amounts are correct. I think  
4 for the nonlow-income programs I've also made a  
5 recommendation on a performance basis of 1.5 percent  
6 of the existing load of the company and that was  
7 based on Commissioner Lemmie's and Centolella's  
8 opinions and recommended in terms of the Vectren --  
9 recent Vectren case dealing with the subject.

10 Q. And OCC is recommending that the  
11 additional DSM and Community Connections Program  
12 costs be recovered through the existing DSM rider; is  
13 that correct?

14 A. It's a proposed rider. So that was the  
15 same mistake I clarified in my testimony.

16 Q. Okay. And in your testimony at page 3  
17 you refer to a supplemental stipulation filed in case  
18 No. 05-1125-EL-ATA dated November 4th, 2005, correct?

19 A. Yes. The date of the stipulation, yes.

20 Q. And so when you say "existing DSM rider"  
21 in your testimony at pages 3 and 11, you mean the  
22 rider that's --

23 A. Can I --

24 MR. SMALL: Objection, your Honor.



1 EXAMINER PRICE: Grounds?

2 MR. SMALL: Unfortunately, counsel is  
3 referring to the testimony, not the corrected  
4 testimony. This is a portion of the testimony that  
5 Mr. Gonzalez corrected so he's now quoting from  
6 something that's been changed by the witness.

7 MR. NEILSEN: Your Honor, I can refer to  
8 the corrected testimony, however, on that corrected  
9 testimony the last line that recommends the change  
10 says "I also recommend the additional" -- excuse me.  
11 One second, your Honor.

12 EXAMINER PRICE: Take your time.

13 Q. Again, Mr. Gonzalez, how is it that you  
14 are recommending that the DSM be collected, the DSM  
15 funding be collected?

16 A. Well, I'm making various recommendations,  
17 one, I'm recommending that the existing two programs  
18 that came out of that stipulation that you  
19 referenced, the Home Performance program and the  
20 Direct Load Control program be funded through the  
21 rider, that the rider that the company has -- the DSM  
22 rider that the company has filed -- proposed.

23 The other second part of my program is  
24 additional funding for new programs and that would --

1 and that I haven't made a recommendation in terms of  
2 the funding mechanism whether -- it doesn't  
3 necessarily have to be the same rider.

4 Q. Okay. So with respect to the first  
5 mechanism that the company has already proposed, that  
6 is the rider that was established in case No.  
7 05-1125-EL-ATA; is that correct?

8 A. That's the one that was approved and  
9 that's being proposed in the companies' filing  
10 currently.

11 Q. So that rider is only collected from  
12 residential customers; is that correct?

13 A. The rider that the company has proposed  
14 is only collected -- yes, that's correct.

15 Q. Okay. So it's OCC's recommendation that  
16 the additional DSM and Community Connections Program  
17 costs be recovered through a DSM rider that applies  
18 only to residential customers; is that correct?

19 A. That is not completely correct. Our  
20 recommendations for the additional funding is a  
21 rider, but to the extent that we're arguing that or  
22 my recommendation is comprehensive programs be  
23 adopted, then that rider to the extent that it's --  
24 if it's a residential program, it would be collected

1 through a residential rider, if it's a commercial  
2 program, that it would be collected by, you know, a  
3 commercial rider and so on up the line.

4 Q. So if a program benefits a certain type  
5 or class of customers, you are recommending that that  
6 class of customers be responsible for paying for it.

7 A. I would disqualify that because I think  
8 some of the benefits I'm talking about with  
9 demand-side management are system benefits so, you  
10 know, if the residential class undertakes them or  
11 implements them, they may have systemwide benefits  
12 for our customers, but generally I'm saying if the  
13 customer -- if the program is designed for a  
14 residential customer, then the residential customers  
15 should pay for it and likewise, if it is a commercial  
16 program, the commercial customers should pay for it.

17 MR. NEILSEN: One second, your Honor.

18 EXAMINER PRICE: Yes.

19 MR. NEILSEN: That's all we have, your  
20 Honor.

21 EXAMINER PRICE: Thank you.

22 MR. NEILSEN: Thank you, Mr. Gonzalez.

23 EXAMINER PRICE: Schools?

24 MR. BREITSCHWERDT: No questions at this

1 time, your Honor.

2 EXAMINER PRICE: Mr. Rinebolt.

3 MR. RINEBOLT: I have some questions,  
4 your Honor. Thank you very much.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Rinebolt:

8 Q. Good afternoon, Mr. Gonzalez.

9 A. Good afternoon.

10 Q. Referring to -- let me just double check  
11 here -- to page 11 of your testimony at lines 5 and  
12 6, counsel for IEU already pretty much quoted this  
13 sentence, my question is, first, where does the  
14 funding for Community Connections Program come from  
15 now?

16 A. My understanding was that it was part of  
17 the rate stabilization plan case.

18 Q. Why do you believe that the Community  
19 Connections Program costs should be recovered through  
20 a DSM rider and not in base rates?

21 A. That was my -- you know, that's my  
22 recommendation in the testimony just based on a rider  
23 mechanism being more flexible and being able -- being  
24 able to increase it and decrease it, you know,

1 according to the circumstances. So that was the  
2 basic -- my basic recommendation.

3 Q. But you are recommending a fixed amount  
4 of funding on an annual basis for that program.

5 A. Yes, I am.

6 Q. So would OCC oppose collecting it through  
7 base rates?

8 A. Like I said, I think I had made the  
9 recommendation that it be in the rider, however, we  
10 believe in the benefits of low income weatherization  
11 programs and we also support the permanency of those  
12 types of programs, so we would have no objections if  
13 they were made part of the base rate case.

14 Q. Now, do you believe that the Community  
15 Connections Program should be overseen by the  
16 collaborative that you are recommending?

17 A. I would think that if -- I would like the  
18 Community Connections Program to be part of the  
19 collaborative and have discussions with the  
20 collaborative program, and to the extent that you may  
21 want to change or modify your program design or just  
22 for discussions that Community Connections and your  
23 staff have a lot of insight in terms of DSM and  
24 energy efficiencies, so we would not want to -- we

1 would want to have that insight be part of the  
2 collaborative.

3 Q. But to obtain that insight would it be  
4 necessary for that program itself to be overseen by  
5 the collaborative? Wouldn't the participation of the  
6 DSM specialist that we have at our disposal in the  
7 collaborative be adequate to achieve your outcome of  
8 a free interchange of ideas?

9 A. Yes, I think that's correct.

10 Q. And do you have any specific  
11 recommendations or concerns regarding the design of  
12 the existing Community Connections Program?

13 A. No, I do not except, for example, if when  
14 you're using funds for demand-side management and  
15 energy efficiency, if there's part of the funds that  
16 are used for other activities that are not energy  
17 efficiency, I think that's always an issue with  
18 funding of the programs.

19 If the goal of the program or the purpose  
20 of the program is to save energy, we would expect  
21 that funding levels be committed to activities that  
22 save energy.

23 Q. Now, are you aware that the existing  
24 Community Connections Program addresses energy

1 efficiency as well as health and safety issues?

2 A. Yes.

3 Q. Thank you.

4 Let's move now to -- let me double-check  
5 page numbers -- 12, the next page. And I have a  
6 couple of questions for you about the Home  
7 Performance with Energy Star program. Do you know  
8 how many units the Home Performance with Energy Star  
9 program completed last year, its first year of  
10 operation?

11 A. I would say last year, I would say  
12 that -- I wouldn't really categorize it as its first  
13 year of operation. I think it was -- the whole  
14 performance program has had a history in the sense  
15 that we negotiated it as part of the stipulation, we  
16 had some momentum with the program after the Supreme  
17 Court remand, the company exercised its option as per  
18 the stipulation to not postpone the program. So in  
19 terms of the timing, I think we're still in some of  
20 the -- in mid stage in terms of we really haven't  
21 started implementing it, we've developed a program  
22 design, we've talked about different marketing.

23 So I wouldn't really characterize it as  
24 being operational yet in terms of being out in the

1 streets, being implemented and so on.

2 Q. Could you tell me how many --

3 EXAMINER PRICE: Excuse me. Does that  
4 mean the answer is zero?

5 THE WITNESS: I believe the answer is  
6 zero, but that's subject to check.

7 EXAMINER PRICE: Okay.

8 THE WITNESS: It's not a big number.

9 EXAMINER PRICE: Okay. Thank you.  
10 Sorry, Mr. Rinebolt.

11 MR. RINEBOLT: No problem, your Honor.

12 Q. (By Mr. Rinebolt) Can you tell me how  
13 many units are projected to be completed over the  
14 life of the program?

15 A. I can't off the top of my head. I don't  
16 have that information.

17 Q. All right. To your knowledge, has any of  
18 the 1.5 million designated to be administered by OP&E  
19 in case No. 05-1125 been spent?

20 A. Not to my knowledge.

21 Q. Thank you. Let's turn, if we could, to  
22 page 15, and I'm focusing on question A15 which  
23 discusses the total resource cost test. The TRC test  
24 incorporates avoided capacity costs into its



1 cost-benefit analysis, correct?

2 A. Yeah, traditionally the TRC costs when it  
3 was developed for integrated utilities who cooperated  
4 avoided capacity and energy costs, I think subsequent  
5 to that and the advent of deregulation, modifications  
6 have been made so, for example, in a deregulated  
7 state you have RTOs that have -- for example, PJM has  
8 an energy and capacity market which uses proxies, so  
9 it's . . .

10 Q. Are there other cost tests out there that  
11 could be used to evaluate these programs?

12 A. You know, the history of DSM, there have  
13 been a number of cost tests that have been proposed,  
14 and I think the combination of the tests that I  
15 recommend is basically a combination of ten years of  
16 arguing about what test to use and I think all the --  
17 basically the resolution of that was we had these --  
18 California codified the test and said, you know,  
19 we're going to do a test from a customer's  
20 perspective, from a utility perspective, from a, you  
21 know, ratepayer perspective, societal, and so on.

22 But I would hold that as an economist  
23 also, you really have to look at all the costs and  
24 benefits of a particular program. I don't think you

1 can, you know, from a resource allocation point of  
2 view try and allocate scarce resources among  
3 competing ends, I think you really have to take into  
4 account all costs.

5 EXAMINER PRICE: Mr. Gonzalez, we're  
6 going to ask you to lift your voice up a little bit.

7 THE WITNESS: I apologize.

8 EXAMINER PRICE: That's okay.

9 Q. Let's turn to page 19 where you discuss  
10 the AMI issue in answer 19. Do you believe that  
11 investment in AMI will reduce customer bills when  
12 compared to a comparable investment in demand-side  
13 management programs?

14 A. I think it can. Depending on the level  
15 of operational savings that are experienced by the  
16 particular utility and then, obviously, the societal  
17 benefits, customer benefits in terms of -- to the  
18 extent that the demand-side management program,  
19 demand response program is facilitated by the  
20 technology.

21 Q. Do you think the societal benefits should  
22 be evaluated based on a TRC test?

23 A. I know in this particular case I think a  
24 societal -- let me backtrack.

1           By "societal" you mean going beyond costs  
2 that have been internalized? Are you talking about  
3 externalities? That's usually the reference to  
4 societal sometimes.

5           Q.   With all due respect, Mr. Gonzalez, you  
6 were the one who brought up the societal benefits,  
7 I'm just trying to understand what you mean by  
8 "societal benefits."

9           A.   Can you repeat the question, please?

10                   (Record read.)

11           A.   I think societal benefits could use the  
12 TRC test. I'm familiar that the staff has  
13 recommended the McKenzie model which is a  
14 cost-benefit model which would have a lot of the same  
15 categories and elements. So -- I wouldn't get caught  
16 up on the TRC test as much as I want a test that  
17 captures all costs, and to the extent that they're  
18 costs that are hard to quantify, have some type at  
19 least of qualitative assessment of the costs so that  
20 we can be better informed about how to proceed.

21           Q.   Well, let's explore this a little bit.  
22 What do you project to be the cost of AMI in  
23 FirstEnergy's service territory?

24           A.   I'm aware that they're in the process,

1 they've made filings. I think it's -- I don't have  
2 the number on the top of my head but it's, you know,  
3 maybe \$110 per customer or, you know, assuming the  
4 meter costs and then you have data management costs  
5 and communications costs. So, you know, it's not  
6 a -- there's some costs involved there. But I mean  
7 that information has been filed by the company and  
8 it's in the docket and is being evaluated by the  
9 parties in that particular docket.

10 Q. So, in fact, this whole AMI issue is  
11 really the subject of a separate docket; is that  
12 correct?

13 A. I think part of this issue is part of a  
14 docket. I think it's -- on the other hand, I think  
15 it's -- I recommend the staff -- I support the  
16 staff's recommendation in the Staff Report on page 90  
17 to 91, I think it helps demonstrate the Commission's  
18 commitment to AMI and it's -- and I guess my  
19 testimony here is consistent with Staff Witness  
20 Gregory Scheck in terms of the AMI rider, proposed  
21 net of benefits AMI rider.

22 Q. Well, let's talk about just a couple of  
23 these benefits. Generally, one views job creation as  
24 a societal benefit; would you agree to that

1 assessment?

2 A. It could be, yes. It's been used.

3 Q. Now, is it true that with the deployment  
4 of AMI that the FirstEnergy companies will no longer  
5 need meter readers?

6 A. I think, you know, eventually at an end  
7 point, you know, as it gets developed, I think meter  
8 reading, you know, might be an occupation that would  
9 be -- would consume less dollars in the anticipate --  
10 but from the labor point of view, to the extent that  
11 it's done through attrition or through retraining or  
12 severances and paid, you know, that's one issue.

13 The other issue is the job creation  
14 really, you could get rid of maybe a hundred meter  
15 readers but you might -- the technology might foster  
16 new demands for new equipment or save customers money  
17 and through disposable income you could actually have  
18 a multiplier factor that could increase for every  
19 meter job lost you can have many more people  
20 employed. So it's a dynamic kind of situation.

21 Q. So it could be good is what you're  
22 saying.

23 A. From an employment point of view I would  
24 argue it probably would be good.

1 Q. Okay. But you can't tell me at this  
2 point that for, say, a 50 million-dollar expenditure  
3 you will create X number of jobs.

4 A. I haven't done that analysis, no, I  
5 haven't.

6 Q. All right.

7 A. But I don't preclude it.

8 MR. RINEBOLT: No more questions, your  
9 Honor.

10 EXAMINER PRICE: Thank you.

11 THE WITNESS: Thank you, Mr. Rinebolt.

12 EXAMINER PRICE: Company?

13 MR. HAYDEN: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Hayden:

17 Q. Good afternoon, Mr. Gonzalez.

18 A. Good afternoon, sir.

19 Q. You're proposing that the company spend  
20 49 million dollars a year on energy efficiency  
21 programs, correct?

22 A. As I stated earlier, I'm recommending a  
23 performance standard which is 1-1/2 percent of your  
24 load over three years cumulatively over three years,

1 so .5, .5, .5 if you were to average it out. And to  
2 give you an idea or give the Commission an idea of  
3 what kind of funding that might, you know,  
4 approximate is around 49 million dollars.

5 Q. Okay. And these are residential  
6 programs, correct?

7 A. Well, that was the same question that was  
8 asked by the IEU --

9 Q. I'm just trying to --

10 A. -- representative and I stated that it  
11 was the new programs -- I'm recommending  
12 comprehensive programs, so to the extent that  
13 benefits are credited in the collaborative for  
14 commercial customers or other customers, that they  
15 also share in the cost to the extent that they are,  
16 you know, being direct and indirect beneficiaries of  
17 the demand-side management programs.

18 MR. NEILSEN: Excuse me, your Honor.  
19 Could I ask that counsel use a microphone or speak  
20 up? We're having trouble hearing you down here.

21 MR. HAYDEN: I'm sorry.

22 MR. NEILSEN: Thank you.

23 THE WITNESS: I'm usually the one who's  
24 guilty of that.

1 EXAMINER PRICE: It's on.

2 MR. NEILSEN: Great. Thank you.

3 Q. (By Mr. Hayden) If I could direct you to  
4 page 3 of your testimony on line 4. Do you see that?

5 A. Yes.

6 Q. You're recommending that the FirstEnergy  
7 companies increase their investment in cost-effective  
8 energy efficiency programs for the residential class.

9 A. That's correct.

10 Q. What you're testifying to now is that  
11 it's a little bit broader than the residential class?

12 A. That statement is not exclusive of the  
13 class, I'm just saying I definitely want it increased  
14 for the residential class, however, the rest of my  
15 testimony states -- also states comprehensive  
16 demand-side management programs.

17 Q. And these various programs, they include,  
18 for example, the Home Performance with Energy Star  
19 and Direct Load Control, correct?

20 A. Those two programs were part of the  
21 stipulation and they're funded through 2008 with  
22 rollover up to 2009. I would -- the 49 million could  
23 help fund those programs ongoing based on evaluation  
24 but it really is also -- we're trying to increase the



1 breadth of the company's demand-side management  
2 programs. So you would target different markets and  
3 maybe different customer classes, so it's more  
4 expansive than those two programs.

5 Q. Okay. And the details of how those  
6 programs will be implemented, pursuant to your  
7 testimony, would be determined through some sort of  
8 collaborative process?

9 A. Yes, that's correct.

10 Q. Okay. And the programs that you're  
11 recommending, in your opinion those are  
12 cost-effective programs?

13 A. Are you referring to the programs that I  
14 have --

15 Q. I can direct you. Page 12, line 14 of  
16 your testimony.

17 A. That just speaks to the existing programs  
18 that I would, you know, as long as they have  
19 cost-effective, I mean, I'm an economist, so . . .

20 Q. So those two programs in your opinion are  
21 cost-effective right now.

22 A. No, I haven't made a -- that's not what  
23 that's stating. It's stating subject to evaluation.  
24 I mean the program is not even operational. It

1 hasn't been really implemented, one of them, the  
2 Direct Load Control Program, you know, hasn't  
3 exhausted its projections in terms of, you know,  
4 maybe it's 10 percent, maybe you've reached  
5 10 percent of your target or whatever. So, no, I  
6 don't think I can make a determination.

7 I can make a determination that based on  
8 the literature that I've read and in other areas the  
9 programs have passed the total resource cost test in  
10 other areas, but obviously this is site specific and  
11 company specific and so on.

12 Q. Okay.

13 A. The jury's out.

14 Q. I'm sorry?

15 A. The jury is out on those programs.

16 Q. Your testimony, again, I'm at line 14, it  
17 indicates that the programs continue to be  
18 cost-effective. When you say "continue to be  
19 cost-effective," are you implying that they are  
20 currently cost-effective?

21 A. No.

22 Q. When we talk about a cost-benefit  
23 analysis, what we're really saying is that the cost  
24 of the program should be justified by the savings

1 that the program generates. Is that cost-effective  
2 to you?

3 A. In a very general sense --

4 Q. Okay.

5 A. -- as I stated, you know.

6 Q. In other words, there has to be some kind  
7 of economic benefit to the program.

8 A. There has to be benefits to the program,  
9 yes.

10 Q. And you would agree, would you not, that  
11 the companies should not institute a DSM program  
12 until a determination is made that that program is,  
13 in fact, cost-effective, correct?

14 A. The way -- yes, the way I'm proposing the  
15 collaborative is that we would collaboratively  
16 discuss different types of programs, run cost-benefit  
17 analysis, you know, make a determination, and move  
18 forward with those programs that have the best  
19 economics and serve, you know, the different either  
20 market segments or different classes or groups of  
21 classes, interclasses.

22 Q. Now, the programs that you're  
23 recommending in your testimony, have they met any  
24 measure of cost-effectiveness; do you know?

1           A.    I think the programs that I state, I  
2 think on page 13 I mention some programs that the  
3 collaborative might be interested in exploring based  
4 on exemplary programs that have been modeled  
5 elsewhere and those programs, the information that  
6 I've seen in many of these areas have been  
7 cost-effective.

8                   When I was in Connecticut, for example,  
9 we had a number of these programs and I did -- we did  
10 do both impact and process evaluation of the programs  
11 and those programs were found to be cost-effective.  
12 You know, it's all specific. Avoided costs in  
13 Connecticut at that time was a lot higher than it was  
14 here and so on and so forth, but still these programs  
15 seem to have been cost-effective in different parts  
16 of the country, so I would believe that going forward  
17 if they are, you know, designed in a manner that will  
18 make them successful, they are successful.

19                   The other thing I want to say about  
20 cost-effectiveness is that the tide is really on the  
21 side of demand-side management because it seems that  
22 when you're comparing against the alternative, the  
23 alternative of inflation and the costs of the  
24 alternatives in terms of transmission, distribution

1 work, is, you know, is growing at a higher rate and  
2 there's the extent that we have these other benefits  
3 like AMI that are on the generation side and those  
4 costs are increasing quite a bit, especially in  
5 meeting some of the mandatory carbon mitigation  
6 legislation.

7 I think from a cost -- I have less  
8 concern about cost-effectiveness of demand-side  
9 management programs now than maybe I had ten years  
10 ago or something.

11 Q. But back to my original question, I'm  
12 asking whether the programs that you're recommending  
13 are cost-effective or not, and what you're testifying  
14 is that they're cost-effective in other states; is  
15 that correct?

16 A. That's correct, they are cost-effective  
17 in other states and we would review them and run the  
18 analysis specific to FirstEnergy companies to make  
19 that determination. But based on the history of the  
20 programs, I would, you know, I have a -- I would be  
21 very surprised if every program that was suggested  
22 failed.

23 Q. And, in fact, you've not done a  
24 cost-effectiveness study specific to the FirstEnergy

1 companies, have you?

2 A. I have not conducted a cost-effectiveness  
3 study for the FirstEnergy territory, but I have in  
4 other territories that, you know, have plants.

5 Q. Okay. And are you proposing that the  
6 companies continue funding programs if they are  
7 deemed to not be cost-effective?

8 A. No. But, for example, if a program is  
9 not cost-effective, I would first -- if it's  
10 something that's a program design feature, hopefully  
11 we would catch that up front with a process  
12 evaluation to see if there's some problem or  
13 something that's harming the program. But if it's an  
14 intractable kind of, you know, the program is just  
15 not working, then yes, you know, we would probably  
16 want to redirect the funds to programs that are more  
17 cost-effective.

18 Q. And you've not conducted a study specific  
19 to the FirstEnergy companies in this case with regard  
20 to DSM programs, have you?

21 A. No, that's where I recommend the  
22 collaborative with the company input.

23 Q. And your testimony indicates -- I'm  
24 sorry, I am on page 10, lines 10 through 12.

1 A. Page 10?

2 Q. Do you see that?

3 A. 10 to 12, yes.

4 Q. Your testimony indicates that, and we've  
5 talked about this briefly earlier, but \$49 million  
6 per year expenditure would result in 1-1/2 percent  
7 energy usage reduction; is that correct?

8 A. That's my estimate.

9 Q. Have you done your own independent  
10 analysis that supports that finding?

11 A. It's -- I use the Duke case just as a  
12 proxy in terms of what they were spending and what  
13 kind of savings they were using. It's a methodology  
14 that was recently adopted or used in the Columbia Gas  
15 demand-side management settlement, it was -- I would  
16 use a similar type exhibit as my exhibit in my  
17 analysis to come up with a starting number and  
18 percentage of savings.

19 Q. But for the purposes of this case you  
20 have not done your own independent analysis that  
21 supports that finding.

22 A. I have not done -- again, I didn't do --  
23 are you asking me whether -- just for clarification,  
24 are you asking me whether I did an analysis for

1 FirstEnergy that says 49 million is going to yield,  
2 you know, 1-1/2 percent?

3 Q. That's the question.

4 A. No, I haven't.

5 Q. Okay. Have you done your own independent  
6 analysis that indicates that \$49 million a year  
7 investment in DSM would be cost-effective?

8 A. As I stated earlier, any program that  
9 would be proposed or recommended would have to be  
10 cost effective a priori and then post you would do an  
11 evaluation to make sure that it was cost-effective.

12 Q. But you're not sure whether the  
13 \$49 million investment will yield cost-effective  
14 programs.

15 A. Based on my expertise, my experience, my  
16 20 years in the field looking at programs, from, you  
17 know, 49 million to 100 million, 200 million, I've  
18 seen programs that have been cost-effective, so I  
19 have a lot of confidence that the programs will be  
20 cost-effective, otherwise we wouldn't recommend them.  
21 And not just my recommendation, it would be a  
22 recommendation jointly by the collaborative.

23 Q. You're proposing that the companies  
24 recover the costs associated with DSM programs,



1 correct?

2 A. That's correct.

3 Q. Okay. So if the companies are to spend  
4 \$49 million a year on these programs and we recover  
5 our costs, you would agree with me that rates will go  
6 up as a result.

7 A. Well, you know, it depends and it might  
8 be a timing issue, but, you know, the basis of  
9 demand-side management programs is to reduce revenue  
10 requirements by avoiding upgrades to, you know,  
11 circuits, substations, reconductoring, so on, besides  
12 some of the obvious generation savings.

13 So from a revenue requirement perspective  
14 over time the demand-side management program may  
15 lower revenue requirements and that might have a  
16 downward impact on the rates, but originally when you  
17 start the program, the programs have to roll out, get  
18 some momentum, ramp up. So, you know, originally  
19 there will be a -- what we say will be a rate  
20 increase, you know, we'd have a rate increase, but if  
21 a customer took advantage of the program, they would  
22 see a bill decrease.

23 Q. And whatever that increase is it would  
24 apply to all residential customers regardless of

1 whether they participate in DSM or not, correct?

2           A. Well, it would apply to all the customers  
3 that are benefiting from the programs, directly  
4 benefiting. So it could be residential, it could be  
5 commercial. And it would -- the customers that would  
6 benefit directly would be the customers that partake  
7 in the energy efficiency programs, but to the extent  
8 that the programs have indirect benefits, I think all  
9 customers benefit and, yes, so to the extent that  
10 there's indirect benefits, all customers could  
11 benefit.

12           And to the extent, take, for example, the  
13 Home Performance program that we're talking about  
14 where you're developing infrastructure and you're  
15 creating training opportunities for contractors,  
16 you're introducing new technologies, infrared  
17 technologies, so to the extent that you're building  
18 that infrastructure and that infrastructure is not  
19 going to go away whether the program goes away or  
20 not, I think that other customers could benefit from  
21 those market development and transmission efforts.

22           So, again, I would want to reduce -- I  
23 think it's simplistic to reduce it and say only  
24 customers are direct beneficiaries, are the ones that

1 are profiting from the program.

2 Q. But regardless of whether they're  
3 beneficiaries, if a customer is participating -- if a  
4 customer is not participating in the DSM program and  
5 we agree that there would be some sort of rate  
6 increase, would that customer pay that rate increase?

7 A. Yes, that customer would pay the rate  
8 increase, but to the extent that, if you have a  
9 demand-side management program that would lower  
10 distribution costs or postpone, you know, an upgrade  
11 on a line or something, they would also be  
12 beneficiaries of demand side. So it's just a matter  
13 of, you know, you have to account for system benefits  
14 as well as just direct benefits.

15 Q. But nonparticipating customers pay the  
16 costs of the program.

17 A. Yes, and they benefit to the extent that  
18 there's societal benefits that accrue to all  
19 customers.

20 Q. Could you turn to page 15 of your  
21 testimony, please. On page 15 you list a number of  
22 statutes that you indicate support energy efficiency  
23 programs that you've described in your testimony.

24 A. Yes, I cited these statutes, they're

1 simply citations that speak to the spirit of the  
2 legislation. So it doesn't have a direct bearing for  
3 the Commission on this -- the PUCO is not ruling on  
4 these statutes in this particular case.

5 Q. But when you say the statutes support  
6 these programs, you're not saying that there's a  
7 requirement or a mandate that the companies implement  
8 DSM programs pursuant to these statutes, are you?

9 A. No.

10 Q. If you could turn to page 5, line 17,  
11 please.

12 MR. SMALL: I'm sorry. Could you repeat  
13 that?

14 MR. HAYDEN: I'm sorry, page 5, line 17.

15 Q. Actually, it's 17 and 18. You reference  
16 pending legislation in Senate Bill 221.

17 A. That's correct.

18 Q. Have you read Senate Bill 221?

19 A. I've read many renditions of it, yes.

20 Q. So you have read it.

21 A. I've read the bill, yes.

22 Q. You would agree with me that with respect  
23 to any pending legislation or regulations, that  
24 there's some uncertainty as to what will actually

1     become law, correct?

2             A.     There is uncertainty, but given the  
3     debates I've been through and the hearings that I've  
4     been through not much contrary sentiment towards  
5     energy efficiency. I think it's been -- so it seems  
6     that -- I haven't heard a lot of criticisms on the  
7     energy efficiency components of the program, so --  
8     and given some of the movement in, you know, the  
9     Governor's Midwest, like I state, you know, the  
10    Midwest Stewardship initiatives have given the  
11    Governor's executive order and given that a lot of --  
12    at least one company in Ohio is considering energy  
13    efficiency as the first fuel or the fifth fuel, but  
14    the first fuel to activate, I would say there is  
15    always uncertainty with the law but I think it's, you  
16    know, a matter of time.

17             It has strong-hold benefits, I think  
18    energy efficiency has strong-hold benefits. I think  
19    the three banks last week just announced that major  
20    banks in terms of dealing with, you know, carbon,  
21    mandatory carbon legislation, that they're really  
22    looking at energy efficiency in terms of a resource  
23    order, that's really the first thing you would do  
24    because it doesn't have any carbon -- the cheapest

1 carbon impact is one that doesn't have it.

2 Q. Could you turn to page 6, lines 12  
3 through 16. There's a sentence that states "After I  
4 discussed this DSM generation bidding model," and it  
5 ends on line 16.

6 A. Yes.

7 Q. You conclude that funding for DSM through  
8 distribution rates is appropriate, correct?

9 A. That's what my testimony states, yes.

10 Q. Okay. Is that conclusion based on the  
11 conversations that you're referencing in your  
12 testimony?

13 A. That's what I state.

14 Q. Page 12, line 15, please.

15 A. It's not limited to the conversations I  
16 had, that I state, but I just give a sampling of some  
17 of the -- of some of the different players in the  
18 industry that I've talked to. But I wouldn't limit  
19 it to, you know, the separate conversations.

20 Q. But part of the basis of your conclusion  
21 is your conversations with these people as you cite  
22 in your testimony.

23 A. Yes.

24 Q. Okay. Page 12, line 15.

1 A. Yes.

2 Q. You state that exemplary energy  
3 efficiency program profiles are listed in Attachment  
4 WG-2.

5 A. Yes.

6 Q. Could you show me on WG-2 where those  
7 profiles are?

8 A. That is obviously a correction that  
9 needed to be made. I was going to have a list of the  
10 programs. However, the programs are cited in the  
11 footnote in terms of where you could go to get that  
12 particular link.

13 Q. Can you show me where --

14 A. Yes, for example, footnote 20, it says --  
15 if you go to this ACC -- ACEEE\_BestPractoc.pdf, it  
16 will take you to those programs, and they're all hard  
17 linked, so if you select a program, it will take you  
18 there and give you information on the program. I  
19 apologize for not including it. I think it's  
20 information I had made available to the company in a  
21 separate proceeding informally. But it's not one of  
22 my exhibits.

23 MR. HAYDEN: I'm sorry, can I have one  
24 second?

1 Q. I just have one more clarifying question.  
2 Counsel for IEU asked you about DSM, and in your  
3 description you included AMI.

4 A. I think AMI is a -- you can include it  
5 under the umbrella because it facilitates the  
6 implementation of demand response type programs. So  
7 that I think it always falls -- it could fall very  
8 easily under the umbrella, but, you know, like DSM it  
9 has distribution benefits, it will have generation,  
10 environmental, customer benefits. It's a -- falls  
11 into a -- it occupies a lot of different levels.

12 MR. WRIGHT: Excuse me. Are you done  
13 with your answer? I wanted to have the first part of  
14 the answer read back.

15 THE WITNESS: Okay.

16 MR. WRIGHT: Are you done? I didn't mean  
17 to interrupt you.

18 THE WITNESS: If I remember what I said.

19 EXAMINER PRICE: Read back the first part  
20 of the answer.

21 (Record read.)

22 MR. WRIGHT: Thank you.

23 MR. HAYDEN: Your Honor, I have no  
24 further questions.



1 EXAMINER PRICE: Thank you.

2 Mr. Wright?

3 MR. WRIGHT: Just a question or two.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Wright:

7 Q. Good afternoon, Wilson.

8 A. Good afternoon, Mr. Wright.

9 Q. Page 19 of your testimony you discuss net  
10 of benefits rider; do you see that?

11 A. Yes, I do.

12 Q. Question and answer 19.

13 A. Yes.

14 Q. Do you believe the calculation of the net  
15 of benefits rider should include demand response  
16 savings?

17 A. That's a very -- could be a very  
18 complicated response in the sense that if you were in  
19 an integrated utility type situation, you know,  
20 before rereg, definitely it would fall under -- that  
21 response would be a benefit. I think in a  
22 deregulated situation, you know, the benefits are on  
23 the -- to the extent there are benefits on the  
24 generation side, I think I could still count those

1 but it depends.

2 In a deregulated situation you have a  
3 demand response program and the benefits are accruing  
4 in a market to the extent that rates that customers  
5 are paying through a bidding process take into  
6 account those modifications to their load shapes and,  
7 therefore, their prices are lower, then I think you  
8 may -- you know, the analysis would be made at the  
9 generation level.

10 But if you're an integrated utility  
11 situation, for example, the energy security plan or  
12 something becomes permanent or semi permanent, then I  
13 think you could count the programs internally to  
14 the -- you can count those against response programs.

15 So I think Ohio being in a hybrid type  
16 state it makes it hard to answer that question.

17 Q. The recommendation in your testimony  
18 about -- well, strike that.

19 You indicated, did you not, that  
20 effective DSM programs can work to reduce revenue  
21 requirements? Is that correct?

22 A. That's correct.

23 Q. And I believe you mentioned some examples  
24 of how that could occur. With respect to your

1 recommendation regarding the 49 million per year, you  
2 have done no analysis of that type to support the  
3 \$49 million level of spending, correct?

4 A. No, I haven't done the analysis, I just  
5 took what was -- basically took the Duke programs  
6 that were approved by the Commission and looked at,  
7 they're a smaller utility and I just took, you know,  
8 that information and scaled it up.

9 Q. And, again, you've testified here today  
10 that cost-effectiveness of existing demand-side  
11 management programs as well as anything that might be  
12 proposed in the future should always be subjective  
13 and continually be reviewed for cost-effectiveness;  
14 is that right?

15 A. Yes. One thing I would add is that, you  
16 know, with changing circumstances, you know,  
17 something that -- a cost that may not -- and I speak  
18 to that in my testimony, a cost that may not be  
19 internalized at any particular time, for example,  
20 carbon may, you know, within the, you know, if we're  
21 doing the analysis this year, these programs -- an  
22 implementation of a program being some kind of  
23 appliance, some kind of process that lasts 15 years,  
24 I think someplace in that cost-benefit analysis

1     you're going to have to incorporate some kind of  
2     value for something that is, you know, or do at least  
3     some kind of sensitivity analysis to see what future  
4     environmental type regulations would impact on the  
5     program.

6             Q.     And it's your belief that a lot of this  
7     work should be done within the collaborative setting?

8             A.     Yes, I think it lends itself to that.

9             MR. WRIGHT:   One minute, your Honor.

10            EXAMINER PRICE:   Certainly.

11            MR. WRIGHT:   That's all I have.   Thank  
12     you.

13            THE WITNESS:   Thank you, Mr. Wright.

14            EXAMINER PRICE:   Mr. Small, redirect?

15            MR. SMALL:   No redirect, your Honor.

16            EXAMINER PRICE:   Thank you.

17            Mr. Gonzalez, you're excused.

18            EXAMINER BOJKO:   Mr. Small.

19            MR. SMALL:   Your Honor, at this time I  
20     would renew the OCC's motion to admit Exhibits 3 and  
21     3A, Mr. Gonzalez's testimony and the errata sheet.

22            EXAMINER PRICE:   Does anybody have any  
23     objection to the admission of OCC Exhibits 3 and 3A?

24            MR. WRIGHT:   No.

1 EXAMINER PRICE: Hearing none those  
2 exhibits will be admitted.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 EXAMINER BOJKO: Let's go off the record.  
5 (Off the record.)

6 EXAMINER PRICE: Back on the record.  
7 Mr. McNamee.

8 MR. McNAMEE: At this time the staff  
9 would call Christopher Kotting.

10 EXAMINER PRICE: Mr. Kotting.  
11 (Witness sworn.)

12 EXAMINER PRICE: Please be seated. State  
13 your name and business address for the record.

14 THE WITNESS: My name is Christopher  
15 Kotting. My business address is 180 East Broad  
16 Street, Columbus, Ohio.

17 EXAMINER PRICE: Thank you.  
18 Mr. McNamee.

19 - - -

20

21

22

23

24

1 CHRISTOPHER KOTTING

2 being first duly sworn, as prescribed by law, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Mr. McNamee:

6 Q. Mr. Kotting, by whom are you employed and  
7 in what capacity?

8 A. I'm employed by the Public Utilities  
9 Commission of Ohio as an Administrator II.

10 MR. McNAMEE: Your Honor, at this time I  
11 would ask to have a multipage document filed in this  
12 case on January 30 denominated Prefiled Testimony of  
13 Christopher Kotting marked for identification as  
14 Staff Exhibit 6.

15 EXAMINER PRICE: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Mr. Kotting, do you have before you  
18 what's been marked for identification as Staff  
19 Exhibit 6?

20 A. Yes, I do.

21 Q. What is it?

22 A. It is my prefiled testimony in this  
23 proceeding.

24 Q. Was it prepared by you or under your

1 direction?

2 A. Yes, it was.

3 Q. Do you have any additions, corrections,  
4 changes, updates --

5 A. Yes, I do.

6 Q. -- to that testimony? Could you tell  
7 them to us slowly, please?

8 A. Slowly. On page 3, line 7, I misspelled  
9 Miss Chatman's last name, it should be C-h-a-t-m-a-n.  
10 On page 5 on line 14, the words "deployment plans"  
11 should have been underlined or the words "emphasis  
12 mine" don't make much sense.

13 And on pages 14 and 15 questions and  
14 answers 22 and 23 I believe should be deleted because  
15 I believe the objections that they are responding to  
16 would have been withdrawn.

17 MR. SMALL: Excuse me. Could I have that  
18 last one again? I was turning pages here.

19 THE WITNESS: Sorry about that. Pages 14  
20 and 15, questions and answers 22 and 23.

21 MR. SMALL: Thank you.

22 THE WITNESS: You're welcome.

23 Q. Mr. Kotting, with those corrections or  
24 updates are the contents of what's been marked for

1 identification as Staff Exhibit 6 true to the best of  
2 your knowledge and belief?

3 A. Yes, they are.

4 Q. If I asked you the same questions that  
5 are contained within what's been marked for  
6 identification as Staff Exhibit 6 again here today,  
7 would your answers be as therein presented?

8 A. Yes, they would.

9 MR. MCNAMEE: The witness is available  
10 for cross.

11 EXAMINER PRICE: Mr. Neilsen.

12 MR. NEILSEN: No questions, your Honor.

13 EXAMINER PRICE: Schools?

14 MR. BREITSCHWERDT: No cross, your Honor.

15 EXAMINER PRICE: Mr. Rinebolt.

16 MR. RINEBOLT: No cross, your Honor.

17 EXAMINER PRICE: OCC?

18 MR. SMALL: No questions, your Honor.

19 MR. FELD: No cross, your Honor.

20 EXAMINER PRICE: Mr. Whitt was in the  
21 cross-examination chair.

22 MR. WHITT: No.

23 EXAMINER PRICE: Thank you, Mr. Kotting.

24 You may be excused.



1 MR. McNAMEE: Staff would move the  
2 admission of Staff Exhibit 6.

3 EXAMINER PRICE: Any objections to the  
4 admission of Staff Exhibit 6?

5 Hearing none, Staff Exhibit 6 will be  
6 admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. WRIGHT: Your Honor, I think we're  
9 just about to find out Mr. Buckley's on his way  
10 upstairs.

11 EXAMINER PRICE: Do you need a subpoena?

12 MR. WRIGHT: This was not anticipated, so  
13 I apologize.

14 EXAMINER PRICE: No apologies necessary.

15 MR. SMALL: Mr. McNamee, who's the next  
16 witness?

17 MR. McNAMEE: Buckley as soon as he  
18 comes.

19 EXAMINER PRICE: Let's go off the record.

20 (Recess taken.)

21 EXAMINER PRICE: Let's go back on the  
22 record. Mr. Buckley.

23 (Witness sworn.)

24 EXAMINER PRICE: Please state your name

1 and business address for the record.

2 THE WITNESS: It's Joseph Buckley, 180  
3 East Broad Street, Columbus, Ohio 43215.

4 - - -

5 JOSEPH P. BUCKLEY

6 being first duly sworn, as prescribed by law, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Mr. McNamee:

10 Q. Mr. Buckley, by whom are you employed and  
11 in what capacity?

12 A. The Public Utilities Commission and I'm a  
13 Utility Specialist 3.

14 Q. Okay.

15 MR. McNAMEE: Your Honor, at this time I  
16 would ask to have marked for identification as Staff  
17 Exhibit 7 a multipage document filed in this case on  
18 January 30th denominated Prefiled Testimony of Joseph  
19 P. Buckley.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Buckley, do you have before you  
23 what's been marked for identification as Staff  
24 Exhibit 7?

1 A. I do.

2 Q. Can you tell me what that is?

3 A. It's my prefiled testimony.

4 Q. Okay. Was it prepared by you or under  
5 your direction?

6 A. Yes.

7 Q. Do you have any additions, corrections,  
8 changes, updates to it?

9 A. Not at this time.

10 Q. Okay. If I were to ask you the questions  
11 that are contained in that document today, would your  
12 answers be as represented therein?

13 A. They would.

14 Q. Are the contents of what's been marked  
15 for identification as Staff Exhibit 7 true to the  
16 best of your knowledge and belief?

17 A. Yes.

18 MR. MCNAMEE: Your Honor, the witness is  
19 available for cross.

20 EXAMINER PRICE: Mr. Neilsen.

21 MR. NEILSEN: No cross, your Honor.

22 EXAMINER PRICE: Mr. Breitschwerdt.

23 MR. BREITSCHWERDT: No cross, your Honor.

24 EXAMINER PRICE: Mr. Rinebolt.

1 MR. RINEBOLT: No cross, your Honor.

2 EXAMINER PRICE: OCC?

3 MR. SMALL: No questions, your Honor.

4 EXAMINER PRICE: Mr. Whitt?

5 MR. WHITT: Yes, your Honor. May I  
6 approach?

7 EXAMINER PRICE: You may.

8 MR. WHITT: As I'm approaching, I would  
9 like to have marked for identification Company  
10 Exhibit 23 which is an answer -- or a response to  
11 PUCO Data Request No. 87.

12 EXAMINER PRICE: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. WHITT: Company Exhibit 24 which is a  
15 response to PUCO data request No. 89.

16 EXAMINER PRICE: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. WHITT: Company Exhibit 25, a  
19 response to the PUCO Data Request No. 92.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 - - -

23

24

## CROSS-EXAMINATION

By Mr. Whitt:

Q. Mr. Buckley, my name's Mark Whitt. I'm outside counsel to the company. And is it correct that it's your position that certain assets originally classified as service company property should not be included in the revenue requirements in this case because the companies didn't include those assets in their original or update filings? Is that a fair summary of your testimony?

A. That's partially the reason. Another part of it is that they weren't subject to our review; that's another piece of it.

Q. They weren't subject to your review?

A. We didn't have time to thoroughly review them.

Q. Okay. Let's talk about that review. Do you have in front of you PUCO Data Request No. 87? Do you have that, sir?

EXAMINER BOJKO: Mr. Whitt, I'm sorry, you're going to have to speak up. The fan kicked in over there.

EXAMINER PRICE: Or use the microphone.

MR. WHITT: How about if I stand up. Can

1 everybody hear me?

2 EXAMINER PRICE: That would help.

3 A. I do.

4 Q. And, sir, did you draft this data  
5 request?

6 A. I did not.

7 Q. Nonetheless, if we look at the last  
8 paragraph, the first page of Company Exhibit 23, it  
9 provides a description, does it not, of the property  
10 that you contend or you're recommending the  
11 Commission should not include as part of the revenue  
12 requirement?

13 A. It does.

14 Q. And would you accept, sir, subject to  
15 check, that this response was served by the company  
16 to staff on November 1st, 2007?

17 A. Subject to check, yes.

18 Q. Okay. You refer to Company Exhibit 24 in  
19 your response to PUCO Data Request 89. Do you have  
20 that?

21 A. I do.

22 Q. Did you draft this request?

23 A. I think that was done at a meeting with  
24 the company, we kind of drafted it together. So to

1 the extent that I was involved in it, yes.

2 Q. And the information provided in response  
3 to Data Request No. 89 likewise includes the assets I  
4 discussed earlier?

5 A. Subject to check, yeah.

6 Q. Okay. And you actually sat down with the  
7 company and talked about the information.

8 A. I think the initial meeting was on  
9 November 7th.

10 Q. Would you accept, subject to check, that  
11 the written answer and attachments were provided on  
12 November 15th?

13 A. Subject to check, yes.

14 Q. And that's about three weeks prior to the  
15 issuance of the Staff Report?

16 A. I think the Staff Report was concluded on  
17 December 4th, so I don't know the dates particularly,  
18 but subject to check the Staff Report was on  
19 December 4th.

20 Q. And the response to Data Request 89 which  
21 we've identified as Company Exhibit 24, again,  
22 discusses the property.

23 A. Yeah. However, we had a subsequent  
24 meeting with the company and they were talking about

1 when they were going to transfer plant, whether it  
2 was going to be transferred -- some of the plant was  
3 going to be transferred on December 1st, some was  
4 going to be transferred I think -- or maybe  
5 December 31st, or -- no, December 1st, some of the  
6 assets were going to be transferred on January 1st.

7 The assets had at one time been at the  
8 operating companies, they had been transferred to  
9 their service companies, they were going to be  
10 transferred back, there's a lot of assets being moved  
11 around, so the responses to these data requests, I  
12 believe while potentially complete, I don't think the  
13 process was done, so for us to go out and do a  
14 complete review in that short time frame I don't  
15 think would have been complete.

16 Q. You had questions about the data and the  
17 company provided the answers.

18 A. They did.

19 Q. Is that correct?

20 A. Yes.

21 Q. And as you indicated, the Staff Report  
22 was issued on December 4th.

23 A. Correct.

24 Q. And the Staff Report contains various



1 revenue requirements schedules; does it not? Among  
2 other things.

3 A. Yes.

4 Q. And you understand that part of the  
5 process which brings us here today centers around  
6 those schedules in the Staff Report.

7 A. Yes.

8 Q. Let me refer you to now what we've marked  
9 for identification as Company Exhibit 25. Do you  
10 have that, sir?

11 A. Could you be more specific?

12 Q. The response to PUCO No. 92.

13 A. Yeah.

14 Q. Do you have that in front of you?

15 A. I do.

16 Q. And can you identify this as the  
17 company's response to a data request that you issued?

18 A. Yes.

19 Q. And it's clear, is it not, from the  
20 context of the information you're asking that this  
21 data request was issued after issuance of the Staff  
22 Report?

23 A. I'm sorry, I'm not seeing a date on this,  
24 and I don't recall the date that I issued it. Am I

1 missing a date someplace?

2 Q. I didn't ask about a date, just it's  
3 clear from the context, you're asking a question  
4 about an objection No. 2.

5 A. Correct.

6 Q. So we can tell that this data request was  
7 issued after the Staff Report.

8 A. Correct.

9 Q. Okay.

10 A. Sorry.

11 Q. And it likewise contains information  
12 about the same assets reflected in Company Exhibit  
13 23, Company Exhibit 24, correct?

14 A. Correct.

15 Q. And as you had indicated previously, or  
16 you agreed with me subject to check, that you  
17 received a response to Data Request 87 on  
18 November 1st.

19 A. Correct.

20 Q. And you didn't file testimony in this  
21 case in November, correct?

22 A. I did not. I'd like to state that the  
23 date certain on the case was May 31st.

24 Q. I didn't ask you, sir, about the date

1 certain. I asked whether you submitted testimony in  
2 November.

3 A. I did not.

4 Q. And you didn't submit testimony in  
5 December.

6 A. I did not.

7 Q. And it wasn't until January 30th, 2008,  
8 that you filed your testimony; is that correct?

9 A. Correct.

10 Q. And you're also aware that staff has  
11 filed -- other staff persons have filed testimony in  
12 this case, correct?

13 A. Correct.

14 Q. And some of that staff testimony contains  
15 information not in the Staff Report; does it not?

16 A. I haven't read all the staff testimony  
17 but I'm assuming it does.

18 Q. And that some of that testimony was filed  
19 as recently as yesterday.

20 A. Again, I don't follow it that closely.

21 MR. WHITT: I have nothing further.

22 EXAMINER PRICE: Redirect?

23 MR. MCNAMEE: One second.

24 EXAMINER PRICE: Take your time.

1 MR. McNAMEE: No redirect.

2 EXAMINER PRICE: Thank you.

3 Mr. Buckley, you're excused.

4 THE WITNESS: Thank you.

5 EXAMINER PRICE: Mr. McNamee.

6 MR. McNAMEE: Your Honor, at this time  
7 staff would move the admission of Staff Exhibit 7.

8 EXAMINER PRICE: Objections?

9 Without hearing objections Staff Exhibit  
10 7 will be admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER PRICE: Mr. Whitt, are you going  
13 to move --

14 MR. WHITT: The company will move for the  
15 admission of Company Exhibits 23, 24, and 25.

16 EXAMINER PRICE: Any objections?

17 MR. McNAMEE: No.

18 EXAMINER PRICE: Hearing none, Company  
19 Exhibits 23, 24, and 25 will be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Let's go off the record.

22 (Off the record.)

23 EXAMINER PRICE: Let's go back on the  
24 record.

1 Mr. McNamee.

2 MR. McNAMEE: At this time, your Honor,  
3 staff would call Ibrahim Soliman.

4 (Witness sworn.)

5 EXAMINER PRICE: Please be seated and  
6 state your name and business address for the record.

7 THE WITNESS: My name is Ibrahim Soliman.  
8 My business address is 180 East Broad Street,  
9 Columbus, Ohio.

10 EXAMINER PRICE: Thank you.

11 Mr. McNamee.

12 - - -

13 IBRAHIM SOLIMAN

14 being first duly sworn, as prescribed by law, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. McNamee:

18 Q. Mr. Soliman, by whom are you employed and  
19 in what capacity?

20 A. I am employed by the Public Utilities  
21 Commission of Ohio. And I am a Public Utilities  
22 Administrator II in Accounting and Electricity  
23 Division of the Utilities Department.

24 MR. McNAMEE: Your Honors, at this time I

1 would ask to have marked for identification as Staff  
2 Exhibit 8 a multipage document filed in this case on  
3 January 30 denominated Prefiled Testimony of Ibrahim  
4 Soliman.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. Soliman, do you have before you  
8 what's just been marked for identification as Staff  
9 Exhibit 8?

10 A. Yes, I do.

11 Q. Can you tell me what that document is,  
12 please, sir?

13 A. It's my prefiled testimony for this  
14 proceeding.

15 Q. Mr. Soliman, was it prepared by you or  
16 under your direction?

17 A. Yes.

18 Q. Mr. Soliman, do you have any additions,  
19 corrections, updates to that document?

20 A. Yes, I do.

21 Q. Could you tell us slowly what they are?

22 A. Page 3 of my testimony, line 12, the word  
23 "base" should be "based," I need to insert the letter  
24 D.

1                   Page 4, the footnote at the bottom of the  
2 page, the sign minus between the 35 percent and the  
3 34.13 percent should be equal sign, not a minus sign.

4                   EXAMINER BOJKO: Could you please speak  
5 into the mike a little?

6                   EXAMINER PRICE: Thank you.

7                   A. Page 10 of my testimony, I'd like to  
8 withdraw questions No. 16 and 17 and my answers to  
9 these two questions.

10                  Q. And that's because those objections have  
11 been withdrawn?

12                  A. Yes.

13                  Q. Is that all of your additions,  
14 corrections, updates?

15                  A. Yes, sir.

16                  Q. With those additions, corrections, and  
17 updates are the contents of what's been marked for  
18 identification as Staff Exhibit 8 true to the best of  
19 your knowledge and belief?

20                  A. Yes.

21                  Q. If I asked you those same questions that  
22 are contained within that document again here today,  
23 would your answers be as they are presented therein?

24                  A. Yes, they would.

1 MR. McNAMEE: With that, your Honors,  
2 Mr. Soliman is available for cross.

3 EXAMINER PRICE: Mr. Neilsen.

4 MR. NEILSEN: No questions, your Honor.

5 EXAMINER PRICE: Schools?

6 MR. BREITSCHWERDT: No cross, your Honor.

7 EXAMINER PRICE: OCC? I'm sorry,  
8 Mr. Rinebolt.

9 MR. RINEBOLT: I do have two or three  
10 questions for the witness.

11 EXAMINER PRICE: That's what I get for  
12 skipping you.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Rinebolt:

16 Q. Good afternoon, Mr. Soliman.

17 A. Good afternoon.

18 Q. On page 4 of your testimony you discuss  
19 an objection that Ohio Partners for Affordable Energy  
20 made to the Staff Report. Just very quickly, your  
21 calculation, correct me if I'm wrong, takes the  
22 35 percent standard federal tax rate and then adjusts  
23 it for the elimination of -- for the state and local  
24 taxes; is that the adjustment that you make?